

The Child And The Law



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The Child And The Law

Papers from the International Conference on

Shaping the Future by Law: Children, Environment and Human Health

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MEASURES TO IMPLEMENT THE CONVENTION ON THE RIGHTS OF THE CHILD

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Inaugural Address

Dr Jon E. Rohde

UNICEF Representative, India

Respected President, Honourable Prime Minister, Your Excellency Chief Justice of the Supreme Court, other dignitaries and participants, Ladies and Gentlemen,

I bring you first the greetings and appreciation of Mr James Grant who sees this gathering as setting a global precedent — a New Deal for all children. Eight years ago, India hosted the South Asian Association for Regional Cooperation (SAARC) summit at Bangalore. During that meeting, Heads of State of great nations paused to consider, for the first time in history, the importance of children to the development of their nations.

Their deliberations went beyond a charitable or humanitarian concern by calling for concrete actions. They asked the UN to formulate the Convention on the Rights of the Child; they initiated the commitment of all governments to achieving universal immunisation of children by 1990.

This meeting, for the first time, put children on the international agenda. It was followed by similar deliberations and resolutions from the Organisation of African Unity, Central American Heads of State and even in the famous Reagan-Gorbachev summit in Moscow. Perhaps it was their concurrence on the importance of peace for children which started the thaw that ended the Cold War.

The momentum from Bangalore led to a new departure in world concerns for the future, actions which in a very real sense brought nations to think about what was really important and contributed to the end of a polarised world.

By 1989, the Convention on the Rights of the Child was voted by the UN. Soon thereafter followed the largest summit ever, the World Summit for Children when 71 Heads of State gathered in New York to discuss and commit themselves to the future of

children. Later in 1990, the accomplishment of universal immunisation was proof that indeed the impossible can be done.

Today India is once again leading in the recognition that the elimination of the worst elements of poverty need not await the long and arduous path of economic growth. Indeed, children cannot wait, in the words of the famous poet, Gabriela Mistral

Right now is the time his bones are being formed,
his blood is being made,
and his senses are being developed.
To him we cannot answer 'Tomorrow'.
His name is 'Today'.

With India's ratification of the Convention on the Rights of the Child just over a year ago, more than 90 per cent of the world's children are now covered by this, the most widely signed and ratified human rights convention in world history. In recognition of its obligations under this Convention, as well as the provisions in the Constitution and India's own policy on children, measures are being actively pursued to assure the most basic rights of survival, health, nutrition, basic education and protection from exploitation. Indeed it is an urgent and pressing task, for every day in India nearly 10,000 children die (the same number of lives lost in the disastrous earthquake in Latur in September 1993). This daily toll of death comes not from the loud disaster of an earthquake, cyclone or famine, but from the common and readily preventable and treatable diseases for which technologies exist and are affordable.

Two-thirds of our children are undernourished, their minds and bodies growing less than their God-given and genetic potential. Some 25 million young children are not enrolled in school and an equal number drop out before attaining even the basic skills of reading and writing. Twenty million or more are fully engaged in the labour force, having virtually no childhood worthy of

the name. Of 300 million Indian children, boys outnumber girls by nearly eight million, two-thirds of out-of-school children are girls, a majority of children in hazardous workplaces are again, girls. Small wonder, tears often greet the birth of a girl child.

These challenges are being rapidly addressed. While full immunisation continues, other primary health services are being added in the villages addressing the most common causes of death, diarrhoea and pneumonia. Laws now protect breastfeeding from the onslaught of infant formula promotion and the Integrated Child Development Services (ICDS) Programme has expanded to assure better feeding and upbringing of each infant. The Prime Minister himself has announced an increased allocation to education to reach 6 per cent of GDP. The government's intention to assure universal education of at least five

years for every child is testimony of the commitment to this basic right. Compulsory primary education instituted one year at a time progressively over the next five years itself could be the lever to take children out of the workplace, freeing those millions of jobs for adults and restoring the right of each child to a real childhood, where young minds know joy, peace and a hope for their own future.

UNICEF is proud to be a small partner in this great endeavour as we work together towards meeting the promises made to all of India's children. By accomplishing the goals set out in the World Summit for Children, embodied in India's National Plan of Action for Children and in the numerous State Programmes for Children throughout the country, by fulfilling these worthy national objectives, India is clearly stating its national priorities by placing CHILDREN FIRST. ■

The Rights Of The Child



DUDLEY HARRIS

Children and justice: Integrating international standards into the national context

Savitri Goonesekere

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ABSTRACT

In a world full of conflict and violence, the cause of children represents a single issue that can evoke a positive sense of agreement. Prof Savitri Goonesekere maintains that if we realise even a few of the core values of humanism that the Convention on the Rights of the Child (CRC) articulates, we may well succeed in having an impact on the quality of life of all people. She points out that of late people have become aware that human rights instruments are not merely a matter for diplomatic relations between States but a set of norms that can be used to promote accountability of governments at the national level. Laws and a legal system, fashioned according to norms of justice and international human rights represent a universal and common heritage for ensuring that State power does not emerge as authoritarianism. The CRC envisages an important role for the legal system in realising children's rights. The author points out that it is vital to ensure that the standards set in the CRC are incorporated into the national legal systems. The CRC does not prioritise one set of rights but treats them all as indivisible and inter-dependent. Law making, administrative measures and resource allocation must go hand-in-hand in order to protect children's rights. The CRC represents a movement from a welfare approach to a rights approach. Taking the example of India, the author says that social sanction litigation has expanded the scope of Constitutional redress for violations of child rights in areas such as child labour and prostitution and trafficking. She concludes by stating that a child-centred approach to law will give the child access to justice through the court system.

WE MEET TOGETHER AT THIS conference as child specialists, scientists, lawyers and environmentalists, to consider the contribution that the legal systems of our countries can make to a common cause — the well-being of our children. There was a time when anything that concerned law and the legal system was the exclusive preserve of lawyers. The experience that many of our countries have had with the administration of justice has created a very real awareness of the need for a partnership with all groups in society if law is to be used as an effective strategy in realising fairness and equity. The United Nations Convention on the Rights of the Child (CRC), the most recent major human rights instrument, is based on a commitment to a solidarity effort on behalf of the children of the world.

The CRC, as compared to any other human rights instrument, has been ratified and accepted as a binding multilateral treaty by the largest number of countries in the shortest period of time. Countries that have yet to ratify the international covenants which are part of the international bill of rights, have ratified the CRC. This indicates a core reality. In a world full of conflict and violent confrontation, we have found a single issue that can evoke a positive sense of agreement. If we widen this small window of reconciliation and realise even a few of the core values of humanism that the CRC articulates, we may well succeed in having an impact on the quality of life of all people.

The record of many countries in implementing international standards has not been one of which they can be proud. States Parties ratify Conventions and yet decades later continue to recognise laws, policies and practices at national levels which infringe on those standards. Most international instruments refer to "the people" on whose behalf these instruments have been ratified. Yet it is only recently that the people are becoming aware that international law has been transformed. It is no longer exclusively a matter for diplomatic relations between States but rather a set of norms that can be used to promote accountability in government within the state and at the national level. The European Convention of Human Rights has adopted a radical procedure in this regard and even gives individuals a right of relief and redress for any infringement of the standards of the Convention by their governments.

There are those who will argue that a rights strategy and realising justice through the use of law are superfluous or irrelevant concepts, particularly in developing countries which suffer problems of poverty, social divisiveness and economic limitations. Yet the history of the past and the realities of today must surely convince us that the State has to be a presence in governance. It cannot "wither away" if we are to prevent anarchy. It is therefore vital to recognise that reality and develop structures and institutions that will humanise the interaction between the State and the people. Laws and a legal

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system fashioned according to norms of justice and international human rights standards which reflect the anguish and inspiration of human experience in struggling with authoritarianism are important for all peoples and their governments. They represent a universal and common heritage for ensuring that State power does not emerge as authoritarianism, but is exercised in a democratic environment.

The CRC is based on a strategy of rights and the implementation and enforcement of those rights. It envisages an important role for the legal system in realising those rights. International agencies such as UNICEF, which are committed to the interests of children, have a critical role in helping to interpret those rights and in refining them within the context of international human rights law standards. It is the responsibility of both the State and the people to ensure that these rights will not remain aspirations or concepts of international law that we have no hope or expectation of realising. We cannot afford to create an impression of international consensus, a common vision and a value system, where there is no real commitment to move our societies towards fulfilling their promises to children.

Accepting treaty commitments under international law often becomes only a gesture, because most of our countries do not recognise that international law and domestic law are one system. According to this dualist approach, international law can be enforced domestically, only if treaty standards are incorporated into the national legal system. National courts therefore perceive treaty standards as having moral rather than legal authority. This is why it becomes vital to ensure that the standards set by the CRC are incorporated into the national legal systems.

In setting about the task of incorporation, we must stand committed to certain basic values that are enshrined in the CRC. The CRC, like certain other human rights treaties, recognises the concept of cultural pluralism and diversity. Nevertheless, Articles 2 and 3 of the CRC, which can be described as the "non-discrimination" and "best interests of the child" clauses, require that States Parties commit themselves to realising the same framework of core rights for all children. Article 2 in particular clarifies that a child's right of survival and development, protection from exploitation and aggression, and the right to participate in matters that concern the child, consistent with evolving maturity, must be realised for all children within ratifying countries. Factors such as the child's or the parent's or guardian's birth, economic class, disability, ethnicity, religion or gender, cannot be a justification for denying these rights or diluting them.

The commonality of the core standards set by the CRC in Articles 24, 26, 27 and 28 must stimulate uniformly applicable policies on education, health and a safe environment. We can no longer justify different standards in the treatment of children on the basis of a different vision of the nutrition,

health, safe environment or education needs of "our children" and "others' children." It is difficult if not impossible to adopt a culturally relativistic approach which would argue that the State had no right to intervene or impose common standards. The articles in the CRC on compulsory education and

attaining the highest standards of health, mandate policy intervention by the State to prevent or undermine social practices that would be an obstacle to the realisation of those standards for all children.

Accepting treaty commitments under international law often becomes only a gesture, because most countries do not recognise that international and domestic law are one system.

WE MUST ALSO REMIND OURSELVES that the Convention does not prioritise one set of rights but treats them all as indivisible and interdependent. It is not possible to realise the child's right to survival without projecting towards and committing efforts to realise the rights of development, protection from exploitation and participation. This inevitably means that law making becomes not merely a task for the legislator and the law reformer. Laws have to be put in place with a holistic perception of their linkages, and a commitment of the resources necessary for implementation. It is not therefore possible to prohibit child marriage or child labour by setting minimum ages by law, without legislative and administrative decisions that provide for compulsory education, facilities for registration of marriage, and the general implementation of relevant socio-economic policies. Resource allocation for education, immunisation, nutrition and sanitation, and legislative and regulatory mechanisms to ensure the proper delivery of these services becomes as much a part of law reform as legislating on minimum age for marriage, employment, and juvenile justice. These social and economic policies can no longer be considered issues of political choice outside the realm of law and enforceable rights.

Is this an impractical agenda or framework of international standards for implementation at the national level? In order to answer this question we must recognise the social costs of our past experience in law making without providing adequate socio-economic support or making enforcement a reality. Many developing countries in Asia and Africa face problems of infant mortality, child marriage, maternal mortality, and the phenomena of child widows, child trafficking even across national borders for prostitution, and child labour. We are used to consider these children as high

risk, exceptional categories who as children placed in difficult social and economic circumstances need protection by law. Yet the reality is that these children are a product of our countries' inability to realise their rights and the right of their families to national resources.

WHEN FAMILIES ARE GIVEN minimal allowances to care for children, when maternity leave is grudgingly granted or perceived as a "benefit" to the working mother, we are perpetuating the myth of alleviating poverty and destitution while supporting a welfare payments and benefits ideology. Many of our countries have vagrancy laws that perceive poverty as a fault. Juvenile justice laws which deal with neglected street children speak of the need to rehabilitate them, and impose sanctions on parents for their poverty and neglect. Because we do not provide adequate resources for education or registration of marriage, we are reluctant to impose sanctions on parents and the family for infringement of laws on child marriage and child labour. We recognise the validity of child marriage even as we set a standard of a minimum age of marriage by law. In a vicious cycle the inadequacy of the facilities is used as a justification for not imposing sanctions for violations. In the process we do not begin to touch the fringes of the problem of gender discrimination and denial of children's access, girls in particular, to minimum standards of health and education. We cannot ameliorate adult female illiteracy or the health of the working mother. Maternity leave laws make it more difficult for a woman to compete with men for employment. Law making is perceived as ambivalent, and fails to have an impact on these problems.

The CRC focusses on our past failures in recognising that we should shift from the "poor law" and "welfare benefits" approach that has fertilised the jurisprudence of our countries for many centuries. Access to basic education, health care and a safe environment become the socio-economic rights of all children and their families who are entitled to resource allocation for these purposes. State Parties are required to

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"take measures" to diminish infant and child mortality, combat malnutrition, ensure pre-and post-natal care for mothers as a social responsibility, and make at least primary education compulsory. It is only if these policies can be put in place, that it will be possible to

realise the protection and participation rights of children. A reduction of the level of gender-based and other types of violence in our societies against children cannot be expected unless prohibitive sanctions are combined with socio-economic policies that encourage responsible parenting and life chances for all children.

The concept of people's and children's core right to basic services in the area of health, education and environment is not as radical for national legal systems as it seems. Indigenous norms and even laws often recognised the concept of "community rights" in land. Even the legal systems derived from Roman law accepted that "the people" had certain rights in public rivers and the sea shore. We already have on the statute books of countries, compulsory education laws, or laws on immunisation, sanitation, community health and maternity leave that are often not monitored or enforced.

Countries with written constitutions also have powerful mechanisms for using their chapters on fundamental rights to promote social action in areas such as health and education. Many of these constitutions adopt the typical standpoint in the traditional human rights discourse and treat civil and political rights as enforceable rights and social and economic interventions as unenforceable guidelines to state policy. However, the Indian Supreme Court with its extensive power of judicial review has developed the concept of using rights' litigation to link the directive principles to justifiable fundamental rights. Social sanction litigation has expanded the scope of Constitutional redress for violation of child rights in areas such as child labour, adoption, children in prison, prostitution and trafficking. The right to life has been recently interpreted as broader than a negative duty of the State to refrain from infringement of personal liberty. It has been interpreted as a positive duty to provide the basic conditions for survival. These initiatives reflect the same perspective, that core needs in the area of health, education and the environment are part of the basic justiciable fundamental rights that accompany citizenship. Citizenship laws which discriminate on the basis of gender have been challenged in the courts of Pakistan and Bangladesh.


The new Constitutional Bill proposed for the Republic of South Africa is unique in the area of constitution making for its integration of international law standards on children's rights and for recognising socio-economic needs as justiciable rights. Children's rights to nurturing, basic nutrition and health, are recognised as their particular fundamental rights. However, children share with adults a fundamental right to basic education and a safe environment. This Constitution is also unique in making the link between child labour and education, following International Labour Organisation standards and the standards of the CRC. Unlike many other constitutions, the South Africa Constitution defines the right to protection from hazardous labour as a right to be

protected from labour that is prejudicial to health and education.

The CRC therefore provides an incentive to the people, legislators, courts and lawyers to expand the scope of fundamental rights by constitutional amendments and/or interpretations of the law that link national constitutional standards to obligations of their states under international law. If an ethos is created in which there is widespread awareness of the CRC, courts and lawyers can be motivated to interpret constitutional and legal standards so as to incorporate the concept of child rights into dispute settlement.

In countries that face problems of divisiveness it is important to remember that common legal values have already been forged by certain processes. Many countries continue to recognise the "choice concept" which permits persons to be governed by State law instead of personal laws based on ethnicity or religion. Certain laws and policies apply to all citizens, irrespective of choice. The courts in most countries have used the concept of the "child's best interests" in guardianship litigation to forge uniform standards that undermine gender discrimination, discrimination against non-marital children and the separateness of personal law that can have a negative impact on children. Constitutional standards already recognise equality before the law and even provide for affirmative state action on behalf of women and children so as to achieve substantive rather than formal equality.

Gender discrimination and discrimination against non-marital children is a remarkable feature of the jurisprudence of many countries. With constitutional clauses on equality and non-discrimination, the standards of the CRC can be used to lobby for those areas that have been ignored in law reforms, since they strengthen and relate to the constitutional standards of domestic legal systems.

 **WHERE** JUDICIAL DISCRETION is exercised, an understanding of the framework of rights can stimulate dynamic interpretations of law that will give the child access to justice through the court system, and influence other methods of dispute settlement. The absence of a child-centred focus in legal proceedings is largely due to the tendency to treat the child as a miniature adult before the courts of law. A child-centred approach stimulated by the standards of the CRC can help to create spaces for providing the child access to justice even within the constraints of existing laws. It may be argued that this kind of judicial activism is inconsistent with the traditional role of the judiciary as an agency concerned with interpreting rather than making law. Yet the judiciary has expanded and

expounded the content of major areas of law precisely because the arrival at a decision in legal proceedings involves policy choices. Today, written constitutions are the basic law of the land, and courts must interpret them to realise fundamental rights. It is hardly possible to argue that they cannot interpret the constitution to promote the realisation of rights.

The obligation of States to publicise the CRC and the regular country report, as well as the concept of national and international cooperation in realising child rights prevents arguments of State sovereignty being used to restrict the monitoring of state performance. Nationally and internationally, the CRC envisages a partnership between many actors and encourages dialogue and cooperation. Just as it requires and assumes a joint parental and family responsibility, it assumes a shared state and family responsibility for realising the rights of children. This concept of a shared commitment makes law making and law enforcement something more than the exclusive preserve of lawyers, judges and law enforcement agencies or their critics. There is indeed no place for professional exclusiveness in formulating strategies to realise these rights.

As we see the massive violations of rights in many of our countries it is easy to lose faith in a strategy of rights and their advancement through legal processes. Yet a rights' strategy has been usually forged through the experience of human anguish in containing the abuse of power. Rather than allow social and economic injustice to continue and spawn the terror of violence and disillusionment which impacts all our lives, civil society and governments can work together to promote State, community and family accountability in the use of power and authority.

If we can ensure accountability and humanism in the process of governance on an agenda of child rights based on the value system of this new and important human rights' convention, we will have found a path to improving our past record on rights and move from rhetoric to action. We can then truly say to children, "You are indeed the wonder tree plant, grown of ruins." ■

The CRC provides an incentive to expand the scope of fundamental rights by constitutional amendments and/or interpretations of the law that link national constitutional standards to obligations of their states under international law.

Reclaiming our common future: Human rights of children

Upendra Baxi

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ABSTRACT

Prof Upendra Baxi observes that we live in an international climate where there is an unprecedented increase of human rights enunciations and a growing disregard for these very rights. Nonetheless, rights declarations relating to children represent comprehensive and caring instruments. The author highlights some of the special features of the Vienna Declaration and the Convention on the Rights of the Child, including especially the child's right to protection. The denunciation of a children's rights instrument, the author emphasises, may result in the "confusion" of our common future. Our appointed historical task is to eliminate adult illiteracy about children's rights. There is a need to acknowledge and develop linkages between the rights of the child and other instruments of human rights. Furthermore, there is a need to promote awareness of the "root causes" of the exploitation and abuse of children. Among these root causes are the state of law, the adjudicatory system and lawyering, all of which require considerable rethinking. According to the author, giving children a voice and a forum may accelerate the adult world's pace of progress. Professor Baxi concludes his paper by observing that India needs to develop appropriate resources in order to defend the rights of children.

OURS IS A DEEPLY PERPLEXING age in relation to rights. On the one hand there is a virtual explosion of human rights enunciations; on the other hand, there is growing disregard of rights and cynicism about their future. The proliferation of human rights instruments seems to have caused critics of human rights to form a rights-weariness and a rights-wariness. They insist that only a lean and sparse articulation of rights provides hope for their enforcement. Thus we are in a situation where there is a notable increase in affirmation as well as violations of human rights, where all struggles articulate themselves in the language of human rights and invoke the "politics" of rights; making human rights into bargaining points for the enhancement of power.

Even so, the Convention on the Rights of the Child, the World Summit Plan of Action, as well as the Jomtien World Conference on Education for All, mark triumphant inaugural articulations of human rights. "Human rights," of course, in some way or other, have tacitly included children's rights. But the range of inclusion was never so comprehensive and caring as is the case now. The Vienna Declaration on Human Rights (1993) accelerates, in so many ways, the dynamics of the international movement for the promotion of "respect for the rights of the child to survival, protection, development and participation." The Vienna Declaration urges "universal ratification" of the CRC by 1995 and urges States to withdraw "reservations to the Convention" which are "contrary to the objects and purpose of the Convention or otherwise contrary to international treaty law." In particular the Declaration insists that all States, with international cooperation, should:

- combat "exploitation and abuse of children by addressing their root causes";
- devise "effective measures against female infanticide, harmful child labour, sale of children, child prostitution, child pornography, as well as other forms of sexual abuse";
- organise "means of improving the protection of children in armed conflicts" and programmes of "aftercare and rehabilitation of children in war zones" as well as those in "especially difficult circumstances." The minimum age of recruitment to armed forces is also addressed.

It is difficult to imagine even the most conscientious critics of human rights enunciations as having any cogent critique of the expansion of child rights. Critics of human rights enunciations must surely respect the achievements of these measures and realise that inaction would be costly. The neglect of the rights of children would mean the confiscation of our common future: the world's children.

Human rights articulations represent human hope in a brutal and brutalising world. They provide arenas for the struggle for a just national and international legal order in

relation to the child; they mark an insurrectionary protest against the savage uses of power in the state and society. Even if we fail to achieve our collectively formulated human aspirations, not to try to achieve them is, starkly put, to belie our claim to be and to remain, human. For a state and society which is callous to the rights of the child can never aspire to be a just society.

What then is our appointed historical task? And how do we achieve it? Happily, the agenda for action is now abundantly available. What is needed, first of all, is the elimination of adult illiteracy about children's rights. Adult illiteracy about children's rights is widespread among policy makers, intellectuals, ideologues, opinion makers (e.g. the media), and even among human rights communities. This illiteracy also makes possible the comprehensive and continual ignorance about linkages between the rights of the child and human rights enunciations which are not child-centred and yet affect their and our common future. Promotion of adult literacy about children's rights is a *sine qua non* for their realisation. It must be realised at the outset that the problem of adult illiteracy with respect to children's rights is as massive, complex and in need of urgent resolution as the problem of general illiteracy addressed at the Jomtien World Conference on Education for All.

Second, we must acknowledge and develop linkages between the rights of the child and other instruments of human rights. There is no danger in such an endeavour of losing the focus on children's rights. Rather, awareness and advocacy of such linkages will enable us to advance the plan of action on children's rights.

Let me illustrate. The World Health Organization had in 1993 activated the advisory jurisdiction of the International Court of Justice on the use of nuclear weapons by a state in war or other armed conflict as constituting a breach of international law. The World Court accepted the reference and asked all states to make submissions by June 10, 1994. No effort is necessary, I hope, to underscore the critical relevance of this event to the future of all human rights, including children's rights. Whether or not explicit so far, the right of all persons, especially children, to immunity from a world with nuclear arms, as a part of the right to peace, is the matrix of all other rights. But there is little awareness or enthusiasm in children's rights communities (indeed, human rights communities in South Asia) on this laudable initiative. Similarly, we have little appreciation of the implications of the Dunkel text on the life and world of children. It should not require any apologies to seek to review world economic development from the standpoint of children's rights.

Third, we need to promote awareness of what the Vienna Declaration describes as the "root causes" of "exploitation and abuse of children." Undoubtedly, the quest for "root causes" is inordinately complex and it would not help to have any reductionist or simplistic understanding or answer. At the

same time, we cannot defer action on children's rights until the outcomes of scholarly and scientific engagement emerge. It may even be said that the lack of such involvement is among the "root causes" of the plight of the world's children! At any rate, re-orientation of education and research traditions in

"children's rights-friendly" directions is a task which ought to be high on our educational policy agenda.

It must be realised that the problem of adult illiteracy with respect to children's rights is as complex and in need of urgent resolution as the problem of general illiteracy addressed at the Jomtien World Conference on Education for All.

AMONG THESE "ROOT causes," clearly, is the state of the law (both normative and institutional). In India, legislative initiatives for the promotion and protection of children's rights are sparse and their enforcement impoverished; some recent movement does, however, point to an emergence of a more active involvement. But insofar as rights are to be enforced by courts, the whole nature (and history) of the adjudicatory system and lawyering manifests itself as among the prime "root causes." For India at least, the need to rethink its adjudicatory system, to retool it, to recreate it, is a need which emerges most sharply in the context of child rights. If the rule of law (legality) is to have any meaning for tens of thousands of India's children as they grow into "adulthood," then legal education and research, the transaction of the legal profession and court-craft, and the reorganisation of the court system should engage the attention of children's rights advocacy in India. In a profound sense, the career and future of a rule-of-law society and state in India remains closely linked to children's formative perceptions about "rights," "law" and "democracy". This remains unexamined but even so it may be said that a nation determines the reproduction or repudiation of legality by the formative experiences of justice and injustice that it imposes on its children.

Fourth, human rights instruments on children's rights stress "participation" as a core value, along with "survival," "protection" and "development." What strategies should be devised to encourage "participation" by children in designing policies for "survival," "protection" and "development" is, indeed, a most critical question. Policy and legal paternalism is the very basis of the movement towards the enunciation of children's rights. The ideology of "participation," however, interrogates the institutionalised paternalism of policy, law, administration. Even to raise this kind of question may seem to be a kind of luxury given the misery and powerlessness of

masses of children, especially in many parts of the Third World.

But it seems to me that giving children a voice, a forum, empowering their opinion, may accelerate the adult world's pace of progress towards realising their rights. To delink thought and action on "participation" in my opinion, is to contribute, knowingly or otherwise, to a strategy or to a deferment of policies regarding the rights of "survival," "protection" and "development."

It seems imperative to me that India should develop resources — intellectual, ideological, institutional and praxeological — for sustained children's rights advocacy. I know how institutions often become "traps" or generate a "deadweight" of their own over time. But given the nascency of the movement for children's rights, the persistence of historic formations that suppress and exploit children, and the need to accelerate history, some sort of institutional arrangement might enhance the capabilities of concerned citizens in their struggle to redeem our common future. ■

Nutrition, ethics and human rights

Urban Jonsson

Regional Director for South Asia, UNICEF

ABSTRACT

Like all other societal problems, malnutrition has a scientific and ethical aspect. The World Summit on Children (WSC) which specified and agreed on a set of nutritional goals, transformed well-known nutritional needs into recognised claims. Dr Urban Jonsson argues that rights are more than claims. Rights are entitlements, even if they do not constitute valid claims. Rights imply obligations with the respondent clearly identified. Rights also imply goals. The author emphasises that the challenge, therefore, is not only to achieve the WSC goals but to achieve them in such a way that the processes required for the realisation of children's rights are strengthened and accelerated. According to the author the WSC goals represent moral minima. He observes that it is very important to pursue morally important goals, even if they are unattainable. Laws are also necessary. When a right becomes a law, the respondent is identified and if the law is violated the respondent can be punished. However, law does not necessarily imply practice if it is not enforced. Information from monitoring the progress towards goals has the potential for increasing "global embarrassment" for those countries that have the resources but avoid the necessary political choices to achieve the goals. The author concludes that in an increasingly democratic world more people will both know that the WSC goals can be achieved and think that they should be achieved.

MALNUTRITION: SCIENCE AND ETHICS

Protein-Energy Malnutrition (PEM), Iodine Deficiency Disorders (IDD), Vitamin A Deficiency (VAD) and Iron Deficiency Anemia (IDA) are the major problems of malnutrition in less developed countries, attacking more than half of the young child population. In society, malnutrition in any form is a problem with medical manifestations. The biochemical and medical complexities of malnutrition are dealt with by the science of human nutrition, while the problem of malnutrition in society calls for a much broader approach, requiring the disciplines of economics, political science, behavioural sciences, and others.

Like all other societal problems, malnutrition has a scientific and ethical aspect. Science deals with what "can" be done, while ethics deals with what "should" or "ought to" be done. It is a scientific fact that iodisation of salt increases the intake of iodine and reduces the risk of IDD. It is, however, an ethical question whether or not salt should be iodised. It is a scientific fact that early initiation of exclusive breastfeeding reduces morbidity and mortality among very young children. The extent to which manufacturers should be allowed to distribute free breast milk substitutes in hospitals is an ethical question.

Science and ethics are dialectically related. Scientific discoveries influence ethics. For example the new discoveries in nuclear science pose some very difficult ethical challenges. Ethics, on the other hand, may influence science, such as the way in which human beings may be used for medical experimentation.

THEORY AND PRACTICE

Both science and ethics progress through the constant interaction between theory and practice. Theory has no meaning without practice, and practice is "blind" without a theory. In science, statements like, "one finds what one looks for" (T. Kuhn) and "nothing is more practical than a good theory" (A. Einstein) reflect the way theory influences practice. Testing theories in practical situations, often means that the theory needs to be revised, i.e. practice influences theory.

THEORY ----> PRACTICE

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In ethics, two types of theories have dominated:

- (a) Goal-based (or teleological) theories
- (b) Duty-based (or deontological) theories.

Goal-based theories, of which utilitarianism is the most common, stress the need to achieve goals, almost at any individual's cost. Duty-based theories, on the other hand, stress the process chosen to achieve certain goals. A key argument in this paper is that a third theory, a rights-based

theory, combines elements of a goal-based and a duty-based theory and therefore provides a better guide for practice.

NUTRITIONAL NEEDS

Problems most often reflect current needs. The nutritional needs of young children have been known for a long time, even if details continue to be debated. These needs are expressed in quantified daily requirements of energy, protein and micro-nutrients. The definition of these requirements is a scientific task.

Unfulfilled needs pose an ethical challenge, depending on how serious the deficiency is judged.

NUTRITIONAL CLAIMS

When a need is recognised as being worthy of sympathy and serious consideration, this need becomes a claim. A need becomes a claim when people find it unethical not to do something about it.

Claims, however, are of different strengths. Some people may *claim* that young children should have their requirements of minimum intake of iodine fulfilled. This is no more than a descriptive statement. Nobody is identified as having the duty to fulfill this claim. Stating that children have a *claim* to adequate iodine intake is stronger, but still no duties are defined. Stating, however, that children have a *claim* against their parents, the community, or the government to get iodised salt every day, identifies clear duties. Parents, the community or the government are expected to do something. Such claims are called justified claims, valid claims or duty-claims.

The World Summit for Children (WSC) and the International Conference on Nutrition (ICN) specified and agreed on a set of nutritional goals (Appendix 1). These goals transformed well-known nutritional needs into

recognised claims.

Heads of Governments/States in the WSC and Governments in the ICN promised to achieve these quantified goals (objectives) before the year 2000.

RIGHTS

Rights are more than claims. Rights are entitlements to something, even if they do

not constitute valid claims against a particular individual or entity of society. Most often, however, rights imply obligations with the respondent clearly identified.

Human rights have been defined as rights which all persons equally have simply insofar as they are human. Gewirth (1984) defines human rights as "personally oriented, normatively necessary moral requirements." "Personally oriented," because they are requirements of distinct subjects, and not related to utilitarian goals. "Normatively necessary," because they are morally mandatory and not a result of charity. "Moral requirements" refer to (a) necessary needs, (b) justified entitlements and (c) claims on others.

An example from nutrition may help clarify these distinctions. Every child needs a minimum intake of iodine ("personally oriented"). Every child should get an adequate intake of iodine, or his/her mental development will be negatively affected ("normatively necessary"). This moral requirement constitutes (a) the fact that iodine is necessary ("necessary needs"), (b) that children have a right to optimal mental development ("justified entitlement") and (c) that the governments have an obligation to ensure the availability of iodised salt ("claim on others").

Human rights are primarily claim-rights, because they imply correlative obligation to other persons or groups. Eide et al. (1991) define these different aspects in the implementation of human rights: (1) to respect, (2) to protect and (3) to fulfil. They also suggest that human rights need to be implemented at different levels of society, from individual/household to international levels. This approach is used by Jonsson (1993) to operationalise the implementation of nutrition as a human right.

The right to be free from Protein-Energy Malnutrition (PEM) has the corresponding goal of eradicating PEM. The correlative obligations at the national level could be:

Respect	Respect the role of NGOs in their efforts to reduce PEM.
Protect	Protect individual mothers through legislation and enforcement of national legislation of the Code of Marketing of Breast Milk Substitutes.
Facilitate	Facilitate the preparation and regular updating of the WSC National Programme of Action and the ICN National Nutritional Plan of Action.
Fulfil	Provide basic services in health, agriculture, water and sanitation.

Stating that children have a claim against their parents, the community, or the government to get iodised salt every day, identifies clear duties. Parents, the community or the government are expected to do something.

A fourth category, "facilitate" is used here. This category was defined by Himes (1992).

The Convention on the Rights of the Child transformed children's needs, recognised as valid claims by the WSC and ICN, into rights. All states that have ratified the CRC have promised to respect, protect, facilitate and fulfill those rights.

GOALS, RIGHTS AND DUTIES

Rights imply duties or obligations. Rights also imply goals. Goals, however, do not imply rights. A goal is a necessary, but not a sufficient condition for a right. This means that human development goals, including nutritional goals, can be achieved without any rights.

Feinberg (1970) describes this in a thought-experiment "Nowheresville," where most of the human goals were achieved but where there was no self-respect, no dignity, no rights. The full implementation of the CRC requires or implies the achievement of all WSC goals. On the other hand, the achievement of the goals does not necessarily mean the full realisation of the CRC.

The challenge, therefore, is not only to achieve the WSC goals but to achieve them in such a way that the processes required for the realisation of the CRC are strengthened and accelerated. Such a rights-based approach combines elements from a goal-based strategy and a duty-based strategy. It constitutes a goal-driven, process-conditioning strategy.

"SHOULD" VERSUS "CAN"

Kant stated that "'ought' implies 'can' — or it is otherwise Utopia." Rescher (1987) questions this statement and suggests a new interpretation of Kant. He argues that if "ought implies can" this logically means that "obligation implies capacity," which in turn is equivalent to "incapacity removes obligation." This, however, seems unacceptable. He qualifies this problem by two arguments.

- a) "To all appearances, an obligation can persist despite an incapacity. We have to be prepared for the prospect of undischageable duties and unmeetable obligations."
- b) "... incapacity does not actually defeat an obligation, it can, however, negate all blame for a failure to carry it out."

He suggests a distinction between the weaker mode of "should" and the stronger mode of "must." Based on Rescher's analysis, a choice needs to be made between:

- a) "Absolutistic" rules with "realistic" expectations, and
- b) "Realistic" rules with "absolutistic" expectations.

In this sense "ought" does not imply "can," while "must" does. In the ideal world, "ought" implies "can," while in the real world only "must" implies "can." Seen in this perspective the WSC goals represent "realistic" goals with absolute expectations, i.e. the goals *must* be achieved, and they *can* be achieved.

The full implementation of the CRC, on the other hand, should be interpreted as "absolutistic" with "realistic" expectations. Rights are not divisible and cannot be graded; they are absolute.

Many goals are "absolutistic" and not attainable. Rescher argues that it is completely rational to pursue unattainable goals. "Truth" has been the goal for scientific progress. As both Popper and Kuhn argued (and agreed for once!), this goal is not attainable. Science, however, can come closer and closer to the "truth" (cf. Popper's definition of "verisimilitude"). The same is true for democracy in political development. The CRC as a whole represents an unattainable goal, although many parts of the CRC can be defined in "absolutistic" goals, e.g. the WSC goals.

It is very important to pursue morally important goals, even if they are unattainable. By doing so, other attainable goals will be achieved faster. The promotion of the CRC contributes to the achievement of the WSC goals. (And the WSC goals are a necessary condition for the realisation of the CRC).

Further, aiming "too high" often gives a better end result than aiming lower. Finally, pursuing unattainable goals gives a clear direction and can often mobilise and create new resources.

LAW AND PRACTICE

Rights implies duties and obligations, but most often nobody can be punished if the obligation is not met. When a right becomes a law, the respondent is identified and if the law is violated the respondent can be punished through the judiciary system.

The challenge, therefore, is not only to achieve the World Summit for Children goals but to achieve them in such a way that the processes required for the realisation of the CRC are strengthened and accelerated.

Practice, however, does not necessarily follow from law. There is therefore a need to enforce a law. Several countries have laws against distribution of non-iodised salt or against aggressive marketing of breast milk substitutes, but their practices have not changed, because the laws have never been enforced.

A RIGHTS-BASED THEORY FOR PRACTISING A GLOBAL DEVELOPMENT ETHIC

The World Summit for Children Declaration and the Convention on the Rights of the Child can be seen as "social contracts" between the Heads of States and governments and the states themselves *and* the world's children.

More than 300 years ago, Thomas Hobbes (1651) defined in his *Leviathan* the concept of a "contract" as, "the mutual transferring of rights" and that "... he that is trusted to perform in time to come, being trusted, his performance is called keeping the promise." The challenge is now for leaders of governments to keep the promise they gave at the WSC and for states to keep the promise they made when they ratified the CRC.

Countries are used to being compared on their economic development. Now the time has come when countries should be compared for the way they take care of their children. Signing the WSC Declaration or the ICN Declaration or ratifying the CRC means an obligation to give "a first call on resources for children." Only the future will tell who will keep the promise.

Hobbes, however, also stated "...covenants without the sword, are but words, and of no strength to secure a man at all." What "sword" do we have? An immediate action that can be taken is to establish national monitoring systems for the gradual achievement of the WSC goals, which are necessary for the implementation of the CRC.

The WSC goals represent *moral minima* (Goulet, 1988), supported by all major religions and political ideologies. A rights-based strategy aims at achieving such fundamental goals, but in such a way that their achievement becomes a right. This implies, for example, sustainability. Such a strategy will contribute to the development of a non-ethnocentric global development ethic (Crocker, 1991).

Gradually the information from monitoring systems will contribute to an increasing "global embarrassment" for those countries that have the resources but avoid the necessary political choices to achieve the goals.

This will contribute to an environment where it becomes "good politics" to ensure the rights of children and "bad politics" to deny children their rights.

In an increasingly democratic world more people will both know that the WSC goals *can* be achieved and think that they *should* be achieved. Ultimately this will not only influence what political leaders choose to do, but also why political leaders are chosen. ■

APPENDIX: NUTRITIONAL GOALS

World Summit for Children Goals

- (i) Reduction of severe and moderate malnutrition among under-five children by half of 1990 levels;
- (ii) Reduction of the rate of low birth weight (less than 2.5 kg) to less than ten per cent;
- (iii) Reduction of Iron Deficiency Anaemia in women by one-third of 1990 levels;
- (iv) Virtual elimination of Iodine Deficiency Disorders;
- (v) Virtual elimination of Vitamin A deficiency and its consequences, including blindness;
- (vi) Empowerment of all women to breastfeed their children exclusively for four to six months and to continue breastfeeding with complementary food well into the second year;
- (vii) Growth promotion and its regular monitoring to be institutionalised in all countries by the end of the 1990s;
- (viii) Dissemination of knowledge and supporting services to increase food production to enable household food security.

International Conference on Nutrition Additional Goals

- (i) To end famine and famine-related deaths; and,
- (ii) To end starvation and nutritional deficiency diseases in communities afflicted by natural and man-made disasters.

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The role of the state in protecting children's rights

Akin Gonen
Government of Turkey

ABSTRACT

The Convention on the Rights of the Child imposes certain specific duties on the State with respect to publicising and reporting on children's rights. The State is also obliged to take legislative, administrative, economic and social measures for the implementation of these rights. Additionally, the CRC lays down many principles relating to children's rights which reflect a change in the overall approach to the child: from "object" to "subject." An important right that has been recognised is the child's right to participation. His Excellency Akin Gonen points out that due to a change of government the ratification of the CRC in Turkey was delayed. Referring to the Turkish legal system in the light of the CRC, the author observes that there are no contradictions between the existing legislative arrangements in Turkey and the provisions of the Convention. With respect to some rights there are some practical problems although the legal frame is conducive to their implementation. In order to implement the Convention comprehensively there is a need to institute some new legislative arrangements as well as certain administrative, economic and social measures. The author makes specific reference to the economic exploitation of children while discussing the need for special measures. The Turkish Government has made efforts to revise its Juvenile Justice Act and attempts are also being made to ensure the compatibility of the national legislation relating to children with the provisions of the Convention. Activities are also being undertaken with respect to children- and women-related goals for health and education. With reference to children in especially difficult circumstances, the author says that the absence of special arrangements for abused and neglected children is an important deficit in Turkey.

AS A LAWYER WHO HAS DIS-
charged duties in the executive
as well as in the legislative organs of the state, I will try to
evaluate the Turkish legal system and existing practices in
terms of the rights envisaged in the Convention on the Rights
of the Child. Before that, I would like to point out the duties
imposed upon the State by the Convention and some principles
cited in the same document.

The Convention obliges States Parties:

- a. to make the principles and provisions of the Convention widely known to adults and children (Article 42);
- b. to submit to the Committee on the Rights of the Child, through the Secretary General of the United Nations, reports on the measures they have adopted which give effect to the rights recognised and on the progress made on the enjoyment of these rights within two years of the entry into force of the Convention for the state party concerned and every five years thereafter (Article 44/1);
- c. to make their reports widely available to the public in their own countries (Article 44/6);
- d. to take all legislative, administrative, economic and social measures for the implementation of the rights recognised in the Convention (Article 4);
- e. to ensure that the institutions, services and facilities responsible for the protection of children shall conform, in terms of safety, health, the number and suitability of staff, with the standards established by competent authorities (Article 3/3); and,
- f. to ensure that the best interests of the child shall be a primary consideration in all actions concerning children (Article 3/1).

Of course, this is not an exhaustive list of the obligations that States Parties have undertaken with respect to the Convention. Some duties that States Parties have to fulfil, particularly those which relate to the duty of making both the Convention and the reports widely known by the public, have the potential of mobilising the public. This mobilisation can make a significant contribution to the material realisation of the rights included in the Convention.

Besides emphasising the economic and social rights of children, the CRC lays down many principles relating to the rights of the child. The legislative, executive and judicial organs of States Parties have to take these principles into account in all activities relating to children.

Among these principles are:

- a. regarding the best interests of the child as a primary consideration in all actions concerning children (Article 3/1);

- b. assuring the child who is capable of forming his or her own views the right to express these views freely in all matters affecting the child and giving due weight to these views in accordance with the age and maturity of the child;
- c. showing respect to his or her basic rights while taking decisions concerning the child;
- d. recognising the principle that parents have the primary responsibility for the upbringing and development of the child, and that appropriate assistance will be rendered to parents by the State in the performance of this responsibility (Article 18);
- e. ensuring that a child shall not be separated from his or her parents unless such a separation is necessary for the best interests of the child (Article 9);
- f. respecting the rights of parents or those who are responsible for the child (Article 3/2 and Article 5);
- g. ensuring review of any penal decision concerning the child by an independent and impartial authority or judicial body (Article 40).

All these principles and provisions clearly show that there has been a change in the overall approach to the child. At the beginning of the present century, the relationship between the State, the child and parents was dominated and governed by quite different principles. Within the frame of these principles, the child was regarded as an "object" rather than a "subject."

Throughout the first half of this century and even in the most advanced countries, the dominant view was that in all actions relating to the child, his or her needs could be best considered and met by "adults". If parents did not or could not fulfil their duties in relation to children, the State undertook to place the child in an institution under State surveillance or in another family. The child's view was not considered at all and there was little regard for the rights of parents.


Today there is a very different approach to the child, and due concern is also paid to the rights and duties of parents. It is accepted in principle that the child has the right to state his or her opinion freely and that this opinion should be properly considered in decisions concerning the child.

The CRC is one of the documents which fully reflects this overall change in approach relating to the child. States Parties have the obligation to respect the rights and personality of the child and to ask for his or her opinion while they are engaged in legislative arrangements relating to the child and preparing the environment in which the child will be able

to grow to his or her full potential.

The CRC was signed by the former Turkish Government on September 14, 1990. In order to ratify the Convention, the former Government immediately prepared a bill and presented it to the Parliament. However, in November 1991 the country had

a general election and the composition of the Parliament, as well as the government changed. As a result, the provisions of the Turkish Parliament Proceedings Regulation, the bill that would provide for the ratification of the Convention, became void. Therefore, the new Government had to draft and present another bill to the Parliament.

 **THIS** NEW BILL IS CURRENTLY on the agenda of the Turkish Grand National Assembly for ratification. Efforts are being made by a group of parliamentarians to ensure the speedy ratification of the Convention.

When the Turkish legal system and related practices are analysed in terms of the provisions of the Convention, we can reach the following broad conclusions:

- a. As far as some provisions of the Convention are concerned, there is no contradiction at all with respect to legislative arrangements or to legal practices. For instance, the child's right to a name and citizenship are guaranteed under the Turkish Civil Code, the Surname Act and the Act on Citizenship, which are all in effect currently. With these acts, it is impossible for a child in Turkey to be deprived of his or her right to a name or citizenship.
- b. For some rights stipulated by the Convention, there are problems relating to practical aspects though no problem exists as far as the legislative frame is concerned. The child's right to education can be cited as an example. In Turkey, the child's right to education is recognised firstly by the Constitution (Article 42) and further elaborated by the Basic Law on National Education and the Code on Primary Education in a manner fully conforming to Article 28 of the Convention. Under these acts, primary education is compulsory and free for all children irrespective of their gender. Furthermore, the State has the obligation to provide appropriate support to children who are talented but lack the material means to reach the highest stages of education in line with their specific

Today there is a very different approach to the child. It is accepted in principle that the child has the right to state his or her opinion freely and that this opinion should be properly considered in decisions concerning the child.

interests and capacities. While these provisions are clearly stated in laws, there are some difficulties in actual implementation. For example, despite the fact that primary education is compulsory and free for both boys and girls according to our Constitution, many families, especially in the region of southeastern Anatolia are reluctant to send their girls to school because of traditional beliefs.

- c. In order to enable our children to benefit from some of the other rights stated in the Convention it is necessary to introduce new legislative arrangements, as well as certain administrative, economic and social measures. Some efforts in this direction have been made.

Article 32 of the Convention recognises the right of the child to be protected from economic exploitation. According to this article, States Parties shall effect all legislative measures in conformity with the relevant provisions of other international instruments to provide the following: minimum ages for admission to employment; appropriate regulation of the hours and conditions of employment; and prevention of the performance of any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, oral or social development. The same article obliges States Parties to take all relevant administrative, economic and social measures to protect children from economic exploitation.

When the Turkish legal system is analysed in terms of the right to be protected from economic exploitation, it is seen that the relevant provisions are scattered among the various acts (viz. Labour Act, Apprenticeship and Vocational Training Act, Primary Education Act and the Act on the Duties and Authorities of the Police Force). In some cases provisions actually contradict each other. The Labour Act stipulates the minimum age for employment as 15 (Article 67) according to the standards of the International Labour Organisation (ILO) agreements. Nonetheless there are some exceptions to this rule. The very same Act states that children above 13 years can

be admitted to employment if the nature of the work is such that it does not impair their health, development and school attendance. On the other hand, according to the Apprenticeship and Vocational Training Act, elementary school graduates may be given training at enterprises for the purpose of preparation for an occupation

before the minimum age limit. This means that children around 11 or 12 years may be legally employed in light work.

The working conditions of children are also taken into consideration by the Turkish legal system. According to the Labour Act, working hours of children must not exceed 7.5 hours and must not interfere with their school hours (Labour Act, Article 67). Before employing children, employers must ensure, through a health check-up, that the child's health is appropriate for the job. The health examination has to be repeated every six months (Labour Act, Article 30). Employers who do not fulfil these obligations are liable to be fined (Labour Act, Article 104).

These legal provisions, which are designed to protect children from economic exploitation, cannot be enforced in most cases since relevant administrative, economic and social measures have not been taken. Moreover, since the Acts mentioned above do not cover children who work in the agricultural sector or in the streets, such children are vulnerable to conditions that are potentially harmful for their mental and physical health, education and development. Street children particularly are frequently subjected to physical, emotional and sexual abuse.

AS EXAMPLES OF THE PROVISIONS OF THE CONVENTION which require new legislative arrangements and some economic, social and administrative measures, we can cite those which are related to delinquent children and others who are abused and neglected. The programme of the previous Coalition Government, in which, as a State Minister I was a cabinet member, gave priority to human rights as well as children's and women's issues. Hence, that Government had, in addition to presenting the bill which provided the ratification of the Convention, prepared another bill which revised the current Juvenile Court Act. In preparing for the Juvenile Court Bill, the Ministry of Justice considered both the Convention on the Rights of the Child and the UN's Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

The Commission of the Ministry of Justice which was in charge of drafting the original form of the bill largely capitalised on the draft proposal which I had prepared during the previous legislative term. The Government which is in office now is as concerned as the preceding Government about children's and women's issues. Presently, the Ministry of State which is in charge of women's and children's issues and social services and the Ministry of Justice both have their commissions working to ensure the compatibility of the national legislation relating to children with the provisions of the Convention. Moreover, in line with the Action Plan which was adopted at the World Summit for Children in 1990, a National Plan of Action is now ready to guide

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THE RIGHTS OF THE CHILD

activities for the realisation of child related goals. Intensive collaborative work has also been taking place between the Government of Turkey and UNICEF since 1990 for the same purpose. Now a Master Plan of Operations forms the frame of these activities which are grouped under the following specific programmes:

- a. Basic Health Programme
- b. Basic Education Programme
- c. Communication and Support for the Status and Development of Women
- d. Basic Services for Mothers and Children in the Priority Provinces
- e. Basic Services for Mothers and Children in the Urban Gecekondus

The Cooperation Programme largely includes backward provinces, those which have been prioritised for development and big urban centres. The rationale behind this is the fact that these provinces are the ones in which children are affected much more adversely by such phenomena as poverty, unhealthy urbanisation, intensive migration and distorted patterns of income distribution.

In addition to those which are valid for all children, the CRC includes special provisions, which cover children in especially difficult circumstances. This category includes children who are:

- in need of protection or special education;
- subjected to abuse and neglect;
- used in crime, drug trafficking, prostitution and pornography; and
- working.

A point which I would like to raise here in relation to children in need of protection is the change taking place in the overall policies of the Social Services and Child Protection Institution in conformity with the provisions of the CRC. This agency now considers keeping children with their own families as the priority solution and strives to create supportive institutions for the family and to extend assistance to needy families. Alternative care such as placing children

with relatives, protective family, adoption, etc. is resorted to only in the most pressing cases. It is now accepted also by the Ministry in charge that institutional care should be the last resort. In spite of this, more than 90 per cent of children who have been taken under protection by the State are placed in protective institutions. We hope that this situation will change soon with the introduction of new policies.

I consider the absence of special legal arrangements for abused and neglected children and the lack of institutions specialising in providing assistance to the families of such children as important items of deficit in my country.

I consider the absence of special legal arrangements for abused and neglected children and the lack of institutions specialising in providing assistance to the families of such children as important items of deficit in my country. On this issue, too, I had prepared and submitted a draft law to the Grand National Assembly. Unfortunately, the very same circumstances which I mentioned earlier also made this draft void. At present I am preparing another draft on the same issue.

Considering all this, I find it essential to form a Children's Rights Commission in the Grand National Assembly. Such a Commission could engage in giving legal arrangements surrounding the rights of the child a perfect character and secure improved follow-up of procedures. I shall be submitting my draft on this Commission to the Assembly as soon as possible.

Given that the legislative, executive and judicial branches of the State recognise the best interest of the child as a priority issue, act in coordination on child related issues, and consider the child not as an "object" but a "subject," I believe that the realisation of the children's rights will be a relatively smooth process. Naturally, the State also has to cooperate with the Children's Rights Committee of the UN; international organisations such as UNICEF, UNESCO, ILO, WHO and FAO; and international and national non-governmental organisations. ■

Jurisprudence of juvenile justice

V.R. Krishna Iyer

Former Chief Justice, India

ABSTRACT

In his exposition on the jurisprudence of juvenile justice in India, Justice V.R. Krishna Iyer observes that the rights of the child are inalienable and that a society which neglects and victimises children only exhibits its lack of humanism. Dwelling on the various instruments, covenants and declarations that have been issued since World War II, the author emphasises their significance with respect to protecting and promoting children's rights to survival, protection, development and participation. He cautions, however, that while resolutions and agreements propose a frame and represent a persuasive force on the state, the actual reaching of justice to children requires several specific efforts at the social and the legislative levels. The goals set in the Declaration on the Rights of the Child, according to the author, can be achieved by judicious and efficient use of available national resources. With respect to child labour, the author maintains that no argument, economic or social, is good enough to justify the exploitation of young children in hazardous conditions that impair their health and deny them their right to childhood. He makes an impassioned plea for redoubled efforts to protect children's rights. The author also assesses the effectiveness of laws dealing with juvenile offences and argues for a penal code dealing with young persons. He points out that there is a significant need for continuity between the Juvenile Justice Act of 1986 and the respective State Children's Acts.

FROM JESUS TO GANDHI, before and after, every sublime soul has beheld divinity in juvenility. Yet with the march of mankind this glorious gift has suffered culpable neglect and callous cruelty for so long and so lawlessly. The hallmark of culture and advancement of civilisation consists in the fulfillment of our obligation to the young generation by opening up all opportunities for every child to unfold his or her personality and rise to his or her full stature — physically, morally, mentally and spiritually.

Ages of criminal neglect, despite protests by humanists, thinkers and sages in every country, have given place at long last to a gentler perception of juvenile justice and a chastened jurisprudence of the rights of the child. Human rights are inalienable and so are the rights of the child. So long as children suffer, are victimised or are not nourished, there is no true humanism in the world. Juvenile jurisprudence, during our heartless century, burgeoned after World War I and blossomed after World War II when the UN placed emphasis on the dignity and worth of the child.

The Convention on the Rights of the Child, represents an instrument of infinite significance which binds peoples everywhere to cooperate "for improving the living conditions of children in every country, in particular, the developing countries and to evolve a viable jurisprudence of juvenile justice."

The Universal Declaration of Human Rights and the International Covenants on Human Rights, which together make the magna carta of mankind, confer rights without discriminating as to age, race, sex, religion, birth or other factors. The Universal Declaration of Human Rights rightly stresses that childhood is entitled to *special care and assistance*. It further maintains that the family, as a fundamental unit of society, should focus on children as the new hope of tomorrow and provide all the necessary conditions for their growth, the lack of which would result in the stunting of the community. So it is that the Universal Declaration specifies in Article 24 that:

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

The voiceless child has title to legal protection before or after birth, according to the canons of international justice. But the harsh truth is that the welfare of the child ranks tragically

low in the agenda of State action. In our present day world, the trauma and torture, the illiteracy and deprivation, the hard labour and gross neglect which are the lot of the Third World's juvenile generation call for sensitive social action, united mass mobilisation and affirmative justice processes. Every child everywhere belongs to one global family and is entitled to a universal minimum of rights, fullness of expression and development of faculties. One hundred and thirteen nations, by consensus, promulgated the Vienna Declaration and Programme of Action where the rights of the child and of the *girl child* in particular, have justly received humane emphasis worldwide.

EVOLVING PRINCIPLES AND STANDARDS

The Vienna Declaration and Programme of Action makes a humanitarian summons on nations in the articles relating to the rights of the child. Part D of the Vienna Declaration dealing with the rights of the child must become the locomotive of juvenile jurisprudence. The World Conference at Vienna emphasised the principle of "first call for children," and underlined "the importance of major national and international efforts especially those of the United Nations Children's Fund (UNICEF), for promoting respect for the rights of the child to survival, protection, development and participation."

The Vienna Conference specifically refers to female infanticide, child prostitution, child pornography as well as other forms of sexual abuse and enjoins that measures be taken by specialised agencies "to ensure the effective protection and promotion of human rights of the girl-child" and "urges States to repeal existing laws and regulations and to remove customs and practices which discriminate against and cause harm to the girl child."


Childhood and youth are subject to many visible and invisible sufferings and disabilities. Thus, several conventions and other instruments have included juveniles as part of International Jurisprudence by the United Nations. Each nation must have a special ombudsman for juvenile justice, with power, *suo motu*, to investigate, hear cases, render verdicts and take action, including punishment.

Cultural cooperation among nation, acceptance of common values and the introduction of a world watchdog, *which will not become an instrument of imperialism*, but will operate in the juvenile field as a functional and effective Human Rights Commission is an urgent desideratum. If the Charter of the United Nations and the International Bill of Human Rights are to be taken seriously by humanity worldwide, there is a need to transform the Declarations, Covenants, Conventions, Resolutions and Programmes of Action from pious wishes and paper projects into stern commands and operational obligations.

The ideals and goals projected in the UN instruments are a global gain. But shaping children's future by law, and harmonising their lives with the right to health and a happy environment has a long way to go. Laws on the books and law in action often occupy different streets. If environmental degradation

and betrayal of human health are not corrected by law and affirmative action by the executive, legislative and judicial wings of the State, tomorrow may castigate today as treacherous. So what we need is the development of a community conscience in the field of child justice, without which social justice and sustainable development will be a mockery of democracy.

Cultural cooperation among nations, acceptance of common values and the introduction of a world watchdog, which will operate in the juvenile field as a functional and effective Human Rights Commission, is an urgent desideratum.

 **THE** CONSTITUTION OF INDIA states specifically that affirmative discrimination in the form of special provisions for women and children is permissible. Article 39(e) of the Indian Constitution shows special concern for children and directs the State to secure conditions in favour of children so that in their tender age, they are not abused nor coerced by economic necessity to enter avocations unsuited to their age or strength.

Article 45 directs the State to provide free and compulsory education for all children until they complete the age of 14 years. There is no doubt whatever that these obligations have been violated. There has been a chronic dereliction of duty on the part of the State. Vast numbers of children have been kept illiterate, uneducated and without protection against exploitations of childhood such as forced labour and unwholesome activities, which condemn them to moral and material abandonment. If the State betrays its obligation, the Court and the people must rise to monitor and correct this delinquency.

GOALS

The needs of children and our duties towards them have been expressed in the Constitution. The Resolution on a National Policy on Education has been adopted by Parliament. It gives direction to State policy on the educational needs of children. India is also party to the UN Convention of the Rights of the Child. Goals set out in this document can reasonably be achieved by judicious and efficient use of the available national resources.

POLICY AND MEASURES

The vision projected covers a comprehensive health programme, nutrition service of a formal or informal nature, free and compulsory education, special attention to the children of weaker sections and those who are socially handicapped, delinquent or otherwise in need of rehabilitation. Even in litigation involving them, children's interests are to be given paramount consideration.

Although nominally a National Children's Board was constituted in 1974 and reconstituted in 1981, the majority of Indian children remain illiterate and uneducated. The majority of the 295 million children in India belong to the vulnerable sections and poverty stricken families. The International Year of the Child (1979) was followed by a whole decade dedicated to the redemption of children from neglect, destitution and deprivation.

The International Year and the decade have come and gone, statistics have escalated and the dimension of the problem remains frighteningly colossal.

The Constitutional obligation has not been implemented and although the international instruments, such as the Universal Declaration and the two Covenants and the Convention and Declaration regarding the rights of the child, have persuasive power over the State, their fulfillment continues to be a low priority. Nevertheless there has been at least one step forward, the Government is committed to the National Policy for Children, which emphasises the importance of education in Human Resource Development.

We may recall the UN Convention on the Rights of the Child, particularly Article 28:

States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall in particular:

India is the producer of the largest number of children without education. The denial of education is the denial of the creative potential of the child and a culpable deprivation by the State.

- a) Make available primary education, compulsory and free to all;
- b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every

child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

- c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- d) Make educational and vocational information and guidance available and accessible to all children;
- e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

It is heartening that the Supreme Court has taken serious note of some of these obligations of the State towards the child and that Parliament has passed legislation entitled the Juvenile Justice Act.

India's 1981 census tells us that 80 million out of 150 million or 52 per cent of Indian's 6-14 age groups were not attending school and less than half of the 6-11 group were in school. Among those in the primary schools, only 40 per cent finished four years of schooling and only 23 per cent reached Standard VIII.

WE SEE THAT NOT MERELY DOES national illiteracy continue to be chronic but that the absolute number of juvenile illiterates has increased from 294 million in 1951 to 482 million in 1991. India is the producer of the largest number of the world's illiterates and children without education. The incidence of poverty is often used as an *alibi* for children not going to school, having been diverted to work.

ILLITERACY, CHILD LABOUR AND POVERTY

The vicious circle of child illiteracy, cheap child labour, and poverty cannot be used to deny the child his/her basic right to develop as a full human being. In fact, other countries with rampant poverty have fared better. China is far ahead of us. African countries have advanced beyond us. Among the 21 largest developing countries, India ranks 15th in overall literacy and 12th in the percentage attending primary schools. The denial of education is the denial of the creative potential of the child and a culpable deprivation by the State since education of the young is a categorical imperative.

India's future, bearing in mind that there are over 20 million children below 14 years of age, depends a great deal on juvenile justice in its developmental dimensions. The National Policy is a printed tribute; but if, alongside it, ill-health and illiteracy, child labour, squalor, shanties and infant mortality flourish, the future remains bleak and the country's failure to provide juvenile justice, an ominous shock. The challenge of the child continues.

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In 1979, the International Year of the Child, the Government set up the Gurupadswami Committee to submit a report on child labour. That Committee notwithstanding, the Ministry of Labour accepted child labour as a "harsh reality," taking the view that abolition of child labour is not an economic feasibility.

The culpability of the establishment is aggravated by the fact that, far from withdrawing children from labour, provision for *training of children to labour better*, is being organised.

For example, in 1978, the Handloom and Handicrafts Exports Corporation (HHEC), a Delhi-based Government body, had set up a training centre to train children between ages seven and 14 to weave carpets. This job has been declared hazardous and forbidden by law since the woollen fibres are dangerous for the child's lungs, eyes and skin. These children, after undergoing training eight hours a day for one year, enter into the carpet industry for employment.

During February and May 1983 a series of reports appeared in the newspaper regarding rampant child labour in the fireworks and match factories of Sivakasi, a town in the Ramanathapuram district in the state of Tamil Nadu. The children in these factories are made to work nearly 15 hours a day, in spite of the fact that the occupation has been scheduled as hazardous for children. This issue of child labour in Sivakasi has ignited a national debate on the question of the legitimisation of child labour.

(*Law Relating to the Employment of Children in India*, Jose Varghese, pages 3-4).

SOCIAL PAEDIATRICS

Social paediatrics, in the sense of eliminating the infirmities — social, economic and other — of children, has received statutory consideration at the hands of our legislatures. Public interest litigation in the area of bonded labour of children has made some change or at least awakened the people to their crime against the younger population. It is an equally well known fact that trafficking in children is becoming resistant to the law. Cheap labour through *dalals* is something blinked at by officials. Girl children often end up in the flesh trade. Indeed, the worst atrocities relate to the girl child. Middlemen buy and sell children while the law offers little resistance.

The legislature may reasonably claim that laws against employment of children have been made as partial implementation of the promise of justice to children. The minimum age of employment has been fixed by law and hazardous employment prohibited. The period beginning with 1950

has witnessed a spate of legislation based on the Labour Investigation Committee Report (1946). Today it can be claimed that in the eye of the law the right to life, which includes the right to education and development, interdicts child labour. This labour not only risks life and opportunity for growth but also denies those freedoms and facilities without which a child is condemned to dwarfism, moronism and penury of creativity. The ILO Convention has gone a long way in the amelioration of children's status.

The Ministry of Labour accepted child labour as a "harsh reality," taking the view that abolition of child labour is not an economic feasibility. Far from withdrawing children from labour, provision for training of children to labour better, is being organised.

The Plantation Labour Act, the Mines Act, the Factories Act, the Motor Transport Workers' Act, the Beedi and Cigar Workers (Condition of Employment) Act, the Employment of Children Act (as amended in 1978) have provisions which are benignly disposed towards children.

The present priorities of the Government ignore the child. The minimum one expected was the implementation of the National Labour Commission recommendations of 1969. Scattered pieces of legislation are not equal to a uniform code which liberates the child and gives him his entitlement for development.

A similar situation holds true regarding child labour, child education, child nutrition, and child development. Swami Agnivesh, Chairperson of the United Nations Trust Fund for Contemporary Forms of Slavery, alleged at the Vienna World Conference that child labour is still rampant:

Mahatma Gandhi always said that the test of human rights and human dignity was when "the last among the least" were empowered to realise them first. Amongst these the most defenseless and the most voiceless are the children. The International Labour Organisation has recently estimated the number of contemporary slaves at around 200 million in bonded labour and/or servitude.

He added with anguish:

The working conditions of child labourers are extremely deplorable causing various physical and mental hazards, depriving children of the bliss of their childhood, education and flowering, all of which constitute their natural rights. Numerous cases of

torture, beating, sexual harassment, and other forms of inhuman treatment are reported which are a reflection of the medieval slavery.

A child's welfare cannot be compromised; a holistic approach to Project Juvenile Justice must deal with the negative and positive aspects, as in the English Children Act. We cannot claim that the Children Act of 1960 and the Juvenile Justice Act of 1986 passed in India are as effective as the English counterpart although the inspiration for both came from the English statutes. When we deal with the child we have to deal with parents too, especially in societies where divorce is frequent and poverty is omnipresent. The guardianship of the child must depend upon the interests and well-being of the child, not only on the personal law.

Likewise, the question of criminal responsibility of a child when an offence is committed needs special attention. The question of neglect and delinquency *vis-a-vis* children is a delicate and sensitive branch of law, and depends very much on concern and commitment for the tender age of the juvenile. In India, more and more crimes are committed by adults *using children as tools*. Here we come upon the need for a Penal Code dealing with young persons which meets the manifold difficulties of the problems of juvenile culpability and curative methodology. Psychiatric inputs may be necessary to help the Court pass appropriate sentences, custodial or non-custodial. After care organisations also call for careful design, depending on the country and culture and social milieu. Certified schools, industrial schools, children's homes and the like, along with foster care, adoption, sponsorship and other human techniques have to be compassionately created. In India there is not even an adoption law because religious differences have made it difficult for a facultative national legislation on adoption. Intercountry adoption has its own dangers although the Indian Court, at the highest level, has laid down guidelines.

The Indian Jurisprudence of Juvenile Justice is the wayward victim of legislative chaos and statutory slumber. And even when a fine piece has been put on the statute book, meaningful execution is distances away.

Even so, the fact remains that inter-country adoption deprives the child of its title to native culture and citizenship and promotes the likelihood of being a second-class citizen in later years in the foreign country. Racism, cultural discrimination and the helplessness of the child in a foreign jurisdiction can-

not be overcome by all that the Supreme Court has laid down.

The finest hour of Juvenile Justice Jurisprudence arrived in India when the Juvenile Justice Act, 1986 was passed. Prior to that, there were many imitative Children's Acts which when put into operation produced chaos.

THE CHILDREN ACT OF 1960 was preceded by the United Nations Declaration of the Rights of the Child in 1959. Concepts became more refined and juvenile justice was adopted by the UN General Assembly in 1985 followed in India by the Juvenile Justice Act of 1986. There is more scientific and comprehensive treatment of the subject in the 1986 law which deals with neglected juveniles as well as delinquent juveniles. Prostitution, narcotic drugs and psychotropic substances, observation homes and places of safety are relevant topics in the juvenile context and are receiving legislative attention now.

The Indian Jurisprudence of Juvenile Justice is the wayward victim of legislative chaos and statutory slumber. And even when a fine piece has been put on the statute book, meaningful execution is distances away. If inaction is a form of action, the executive is culpable of non-enforcement of the law as any serious student of the subject will agree. The tragic irony is that the State Children's Acts continue *de facto* in many parts of the country, because the Juvenile Justice Act visualises various structures, functionaries and expenditures for which the States may not be ready.

Neglected juveniles and delinquent juveniles fall under different categories and punitive provisions regarding each must therefore be different. Many miscellaneous matters regarding duties of parents, appointment of officers, people's participation through Advisory Boards, health care for juveniles and the like, find specific statutory expression in the Juvenile Justice Act. Had this justice legislation been brought into force throughout the country, the protection, development, correction and rehabilitation of younger delinquents would have received therapeutic jurisprudential attention sufficient to meet Constitution obligations.

There are many sins committed by the State which cannot be forgiven but those which relate to the welfare of children deserve condign public censure because the child has the first call on the State's resources. Because children are voiceless and voteless they are neglected with impunity by those in power who will be held guilty by the future.

An ombudsman for juvenile justice with statutory presence and powers for oversight and report, inspection and audit would impart a democratic dimension to a social sector which cannot be solely entrusted to the bureaucracy. ■

The world summit and the convention on the rights of the child: Landmarks for children

Richard Jolly

Deputy Executive Director, UNICEF

ABSTRACT

*The Convention on the Rights of the Child is a landmark for human progress and is particularly notable for the speed with which it came into force, the large number of countries which ratified it, and the development of goals and programmes of action for women and children which it stimulated. In his paper, **Dr Richard Jolly** explores what is needed to take the vision of the Convention forward. According to him the Convention represents a moral minimum which cannot be compromised, because the future of society is dependent on the investment it makes in its children today. He argues that in today's world, we have the capacity, the resources, the experience and the know-how to make a reality of the most basic elements of the Convention. The goals articulated at the World Summit for Children offer a doable and achievable dimension to the Convention. The author elaborates on what the legal community can do to ensure the influence and implementation of the Convention. According to him its contribution can be in the way of providing open support to the Convention, publicising it, demystifying it and building upon it. The legal profession also has a role to play in improving children's access to law. Referring to international issues, the author observes that humanitarian relief, sanctions and economic adjustment policy represent active international intervention in the affairs of a particular country or territory. He points out that evidence exists that children have been negatively affected by some aspect of that intervention. The Convention should be used to illuminate and influence all three areas of international policy. In conclusion, the author identifies some of the basic actions needed to make the Convention a reality.*

THE CONVENTION ON THE Rights of the Child is a landmark — a landmark for human rights, a landmark for children internationally and nationally, a landmark for human progress and the gradual establishment of universal standards for civilisation.

The Convention has also become a landmark in several other more specific respects:

- in the speed with which the Convention first came into force, less than 11 months after it was adopted by the United Nations General Assembly, and in less time than any other human rights convention;
- in the number of countries which have ratified it through national legislation — now 159. Indeed the goal has now been set for ratification by all countries by the end of 1995, with the objective of making it the first truly universal international convention; and
- in the development of a set of international priority goals to meet the basic needs of women and children in health, nutrition, education, water and sanitation, and family planning. These were adopted in September 1990 at the World Summit for Children, only a month after the Convention came into force. These have by now been translated into National Programmes of Action by 92 countries and are in draft or underway in 50 others. Thus over 90 per cent of children in all continents (except Africa) now live in countries which have ratified the Convention and prepared a national programme of action to implement its priority goals by the year 2000.

Nearly 50 years ago, Arnold Toynbee, the visionary historian wrote, "Ours is the first generation since the dawn of history in which mankind dared to believe it practical to make the benefits of civilisation available to the whole human race."

These developments encompassing the creation, adoption, ratification and impending implementation of the Convention on the Rights of the Child are major milestones on the march towards the gradual realisation of this vision.

In my presentation, I would like to explore what is needed to take this vision forward. I would like to speak briefly on four themes. These are:

- the political and practical significance of the Convention at this time;
- what needs to be done to accelerate action, including the role of the legal profession and legal institutions;
- some difficult international issues, needing urgent attention; and finally,

- some concluding remarks, with particular emphasis on priority actions for which India and the legal profession in India might give a lead.

You will forgive me if most of my emphases and examples are drawn from an international perspective — that of UNICEF. Perhaps this is as it should be. Specific issues of the CRC as it applies to India can best be left to the many experts present here who have a wealth of rich and committed experience.

SECTION I

THE POLITICAL AND PRACTICAL SIGNIFICANCE OF THE CONVENTION

The political and practical significance of the Convention today can be summarised in two words. The Convention on the Rights of the Child is a “moral minimum.”

Society, like a family, must provide for the basic needs of children, the next generation, as a first priority for its own survival and development. Investment in children is the priority investment for the future of society. The recognition of this truth is imbedded deep in human culture, in religious values, in much family practice and tradition, indeed in most practice and tradition, except when families are under the extremities of inhuman stress. Care for the young is imbedded deep in the evolutionary imperatives of biology. It is reflected, for example, in the instinctive self-sacrificing care for the young which most mammals display, and in the fact that a malnourished human mother can provide sufficient breast milk for the young infant, even at the cost of her own nutritional status. Of course this is far from desirable or acceptable — which is why one of the goals of WSC is to empower women with human support and adequate nutrition to enable them to breastfeed without such personal sacrifice.

This widespread and deeply ingrained concern for children is of enormous political significance for the adoption of the Convention. Children are the least controversial area in the ethics of development of human rights. “Children’s rights,” in the words of Urban Jonsson, UNICEF’s new Regional Director for South Asia, “can provide a non-ethnocentric frame for development ethics.”

Society, like a family, must provide for the basic needs of children, the next generation, as a first priority for its own survival and development. Investment in children is the priority investment for the future of society.

I found just yesterday in Vietnam, that in the transition from planned to market approaches to economic and social organisation, the Convention on the Rights of the Child provided a frame of human rights which avoided the controversies of human rights, let alone the complexities of such areas as property rights and commercial law.

Thus Vietnam became the first country in Asia to ratify the Convention and, as I mentioned earlier, the Convention has now been ratified by more countries than any other instrument of human rights legislation.

SECTION II

WHAT NEEDS TO BE DONE

Morality marches hand-in-hand with capacity. This is a favourite slogan of UNICEF. It serves as a practical reminder that in today’s world, we have the capacity, the resources, the experience and the know-how to make a reality of the most basic elements of the Convention in any country which chooses to give the task the priority it deserves.

At the World Summit of Children in 1990, seven major goals were adopted to give practical and specific expression to the most basic priorities:

- Between 1990 and the year 2000, reduction of infant and under-five child mortality rate by one-third or to 50 and 70 per 1,000 live births respectively, whichever is less.
- Between 1990 and the year 2000, reduction of maternal mortality rate by half.
- Between 1990 and the year 2000, reduction of severe and moderate malnutrition among under-five children by half.
- Universal access to safe drinking water and to sanitary means of excreta disposal.
- By the year 2000, universal access to basic education and completion of primary education by at least 80 per cent of primary school-age children.
- Reduction of the adult illiteracy rate (the appropriate age group to be determined in each country) to at least half its 1990 level with emphasis on female literacy.
- Improved protection of children in especially difficult circumstances.

These seven major goals were supported by 20 specific goals, dealing with health and nutrition, education, water and sanitation, family planning as well as a core of priority needs of girls and women. Among these specific supporting goals,

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I might mention just two, both of which have since been targeted for achievement by 1995:

- The virtual elimination of Vitamin A deficiency by the addition of Vitamin A to the basic immunisation schedule. Achieving this will help prevent blindness in 120,000 children each year, as well as still births of another 3,000.
- Universal access to iodised salt as a critical step to achieving the virtual elimination of iodine deficiency disorders. Universal iodation of salt would eliminate, almost at a stroke, the largest single cause of mental impairment in the world. Some 1,500 million persons are at risk. Some 600 million suffer some degree of mental impairment due to iodine deficiency, some seven to 10 million so seriously as to be cretins. Yet all of this is preventable by salt iodation which was first brought into Switzerland in the 1920s and now is routinely provided in many industrial countries. Nutrition experts tell us that the IQ among the affected population could increase by seven to 13 points with the elimination of Iodine Deficiency Disorders.

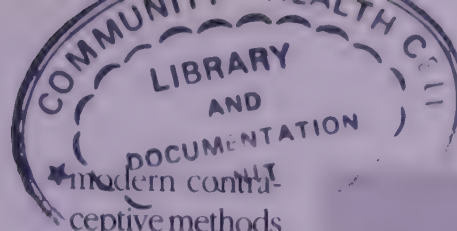
The significance of this practical agenda of goals for the 1990s is that it is doable, achievable within existing resources, and with reasonable prioritisation. The benefits would be enormous.

WHAT HOLDS US BACK?

The distinguished Indian economist Professor Amartya Sen, in his lecture on public policy and famine identified a critical problem — the pervasive belief that famine is a fact of life, that the poor are always with us, and that not much can be done. He noted that the professionals, in his case the economists, had themselves often contributed to this pessimism, notably Malthus and Ricardo in the early 19th century. I hope that the legal profession can display a more visionary perspective than economists from "the dismal science."

Yet as Sen pointed out, much of such pessimism is at variance with the facts, certainly with the broad facts of human advances in basic health and education over the last three or four decades. Consider the following from one of UNICEF's most recent reports, *Progress of Nations*:

The facts are that in little more than one generation, average real incomes have more than doubled; child death rates have been more than halved; malnutrition rates have been reduced by about 30 per cent; life expectancy has increased by about a third; the proportion of children enrolled in primary school has risen from less than half to more than three-quarters; and the percentage of rural families with access to safe water has risen from less than 10 per cent to more than 60 per cent. In the meantime, the proportion of couples using



modern contraceptive methods has risen from almost nothing to more than 50 per cent and average family size is now falling in almost every country.

Such statistics hide great failures and great disparities; poverty, oppression, and exploitation are alive and well. But by any realistic standards, the progress made in the last 40 years has been remarkable. And if the task of meeting minimum human needs had been given any real priority over that time, then it would by now have been largely accomplished: we would today be living in a world in which mass hunger, malnutrition, and preventable disease were things of the past, and it is fair to assume that it would also be a world with less civil conflict, slower population growth, and more manageable environmental problems.

The significance of this practical agenda of goals for the 1990s is that it is doable, achievable within existing resources and with reasonable prioritisation. The benefits would be enormous.

SECTION III

WHAT MIGHT THE LEGAL PROFESSION DO?

Let me return to the Convention more generally. What does the legal profession and the individual committed lawyer need to do to ensure its influence and implementation?

A first critical need is **to support the Convention** openly, to emphasise its historic significance and its practical usefulness, in relation to the needs and priorities of children today.

A second critical need is **to publicise the Convention** in law journals, in the media, in legal education, and in professional associations and meetings such as this one.

A third need is **to demystify the Convention**, to help members of the public to get behind the formalities of its language to the realities of its practical provisions.

Fourth, **improve children's access to law** by making recourse to legal action easily available, affordable and effective.

And finally, **to build on the Convention** a formidable body of precedent and case law in ways which will truly



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help its practical application for human and social progress of children.

All this will require reviewing legislation, applying legislation, challenging outmoded statutes, and building new structures. It will be vital to maintain a perspective of social progress to avoid getting bogged down in the details or the dust.

I have three examples from other countries to show the breadth and the creativity of the actions required and the actions possible.

Brazil — street children. The Convention has been used as the basis of training and awareness building for judges and lawyers as well as for law enforcement officers and the police. Indeed this is a major use of the Convention in many countries by government departments and by non-government groups especially when focused on the problem of children in especially difficult circumstances.

Ecuador — the first country to ratify the Convention. Six women, housewives, decided in 1990 that if the Convention was not to remain a hidden legal statute, children themselves must be made aware of it. So they approached the Electoral Commission in May 1990 and proposed that the electoral machinery be used to allow one Sunday for a vote on the Convention by children in the capital city. The Commissioner agreed. But when the information was publicised, every newspaper in the country condemned the idea. What would children know of the Convention? Why would any child vote against the Convention — so would not it be simply a meaningless vote? Far from being deterred, the six women persisted and listened.

A committee of children, led by one 10- and two 12-year-olds was set up to guide and lead the process. The voting approach was changed not to vote yes or no, but to ask children to list the articles of the Convention in the order which children thought mattered most to them. National television was mobilised to provide a weeklong series of programmes explaining the different articles of the Convention during the week before the vote. The result: 180,000 children between the ages of eight and 17 went to the polls, three times more than expected. Children identified protection against violence and drug abuse as the articles they thought mattered most. And, perhaps most interesting of all, in a poll of *adults* shortly afterwards, 82 per cent were able to demonstrate correctly some knowledge about the Convention.

Rotarians — in the mid-1980s. My third example concerns the role of a professional group in support of worldwide implementation of a goal. The Rotarians committed themselves worldwide in support of the goal to eradicate polio and to the objective of raising \$100 million towards this over the

years until 2005. They raised finance; they helped mobilise action in their own towns; they became a trust force of social mobilisation, contributing to the worldwide acceleration of immunisation coverage and the achievement of 80 per cent worldwide by 1990. To date, the Rotarians have raised \$240 million, far in excess of their original target. Perhaps the lawyers of the world might do something similar to help make the implementing of the Convention a reality.

SECTION IV

SOME DIFFICULT INTERNATIONAL ISSUES NEEDING URGENT ATTENTION

There are three major areas of international action where the protection of child rights is not yet built into international law or practice. These are

- humanitarian relief
- sanctions
- economic adjustment policy

The common element of these is that each is an area of active international intervention in the affairs of a particular country or territory. However, as yet no formal provision exists requiring that the provisions of the Convention be taken into account while defining the specifics of that intervention. Yet, on occasion, in all three cases, evidence exists that children have been negatively affected by some aspect of the intervention.

This may seem surprising in the case of humanitarian relief, but cases have arisen when food has been withheld from a specific area as a bargaining weapon by local coordinators of UN operations. Generally, humanitarian agencies like UNICEF and UNHCR are strongly against such actions but these have taken place. Under the Department of Humanitarian Affairs, principles and guidelines are being prepared currently to avoid a recurrence of such a situation.

In the case of sanctions, the repercussions on young children, the most vulnerable of a country's population, are clear. There are several recent cases where sanctions have led to increases in malnutrition and child mortality. Of course, the legal, ethical and practical issues involved are complex because sanctions are often designed to put non-democratic regimes under pressure to change. And in the long run, it can often be argued that the situation of children will improve greatly if sanctions force a change in regime. Nevertheless, the Convention on the Rights of the Child does not provide for putting under stress the most essential needs of young children in the short run in order to achieve long term gains.

Adjustment policy also raises complicated issues, with some similar elements, owing to the pressures on a country's consumption, employment and wage levels and its public

expenditure on basic health and education which often follow from the conditionality of the adjustment process and the conditionalities of obtaining international finance to support the adjustment process. These issues have been much debated in the economic literature over the last decade, with strong and contradictory views expressed as to the extent to which children and other vulnerable groups have been affected. My point here is a different one, hopefully less controversial. It is that nowhere in the principles of international action or adjustment is there recognition of the provision and priorities of the Convention.

I believe the Convention on the Rights of the Child should be used to illuminate and influence all three of the above areas of international policy. As the Convention reaches almost universal ratification by individual countries, it would be strange indeed if its principles and provisions had no influence on the action of international agencies.

These are therefore areas where creative thought and writing is required by those concerned with international and child rights laws.

CONCLUDING REMARKS

In conclusion, let me return to the Indian situation.

India has made remarkable progress in several areas of human development since Independence; yet, the country continues to face enormous challenges with respect to children.

There are nearly two million infant deaths every year. Around 60,000 children become blind every year due to Vitamin A deficiency. Close to 2.2 million children are afflicted with cretinism. An estimated 20 to 25 million children in the age group of six to 14 years are illiterate. More than 20 million of the children who are not in school are engaged in work which is characterised by conditions that are exploitative and harmful.

Also, nothing is more disturbing in India than the systematic deprivation and unequal treatment of girls vis-a-vis boys. That there are an estimated four million "missing girls"

in the age group of zero to six years in India is shocking. Girl children are deprived of equal opportunities, be it in survival, health, education or nutrition.

What might this conference set in motion? How can the legal profession in India, given its influence and the potential for leadership, work towards making the Convention on the Rights of the Child a reality?

I remind you of six basic actions:

- First** Review legislation systematically to ensure that the rights of children are protected and promoted.
- Second** Support the National Plan of Action and the State Plans of Action.
- Third** Improve public awareness of the CRC by demystifying laws and also by incorporating CRC concerns into the curriculum in schools and colleges.
- Fourth** Improve children's access to law by making recourse to legal action easily available, affordable and effective.
- Fifth** Be more proactive in monitoring violations of children's rights and reporting on the CRC.
- Sixth** As citizens, play and continue to play a more active role as partners in building social awareness, forging alliances on children's rights, and mobilising public action in support of children.

All of these — and much more — we would do without hesitation to help or to provide for our own children. Socially, nationally and internationally, we need to use our professional skills and professional involvements to ensure the same for all children. ■

India has made remarkable progress in several areas of human development since Independence; yet, the country continues to face enormous challenges with respect to children.

Child Labour: Exploitation And Primary Education



UNICEF PHOTO

Child labour and legislation for compulsory education

Shantha Sinha

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ABSTRACT

Whereas several innovative programmes have been instituted in order to universalise education in India, considerably less attention has been paid to making primary education compulsory through the enactment of appropriate legislation. Drawing on the experience gained over a period of eight years of intense micro-level work in a backward pocket of Andhra Pradesh, Dr Shantha Sinha argues that the issues of illiteracy and child labour cannot be resolved on a mutually exclusive basis and that primary education is potentially a critical means of eradicating the economic exploitation of children. The author maintains that poverty as the explanatory root cause of child labour has been emphasised more than necessary. She observes that there exists a considerable unrecognised demand for education for children even among the economically weakest sections of the rural population. The real impediments to passing and enforcing compulsory education legislation, she contends, lie in the self-imposed financial constraints of the State and an inadequate grasp of the real issues at hand. Where there is a demand for education, legislation will ensure that there is adequate pressure on the State to protect children's right to education. The significance of any legislation for compulsory education, she concludes, lies not so much in the fact that parents can be compelled to send their children to school by an enforcement agency, as in that the State can be obliged to provide the necessary infrastructure and investment to give all children access to education.

THE ECONOMIC EXPLOITATION of children in India has always been an area of concern. While official sources estimate the number of child workers to be 17.36 million, others have placed the figure at the much higher level of 44 million. High as they are, even these figures do not reflect the real tragedy of the working child in India. Most children work in highly exploitative conditions and all are deprived of even the most minimal educational facilities.

In rural areas it is a fact that the child who does not attend a formal school is a working child. Collection of water, fuel, household chores and taking care of younger siblings all constitute important elements of a child's life. While many of these activities cannot be defined as hazardous work, in as much as they interfere with the normal development of the child and in the child's ability to reach his/her true potential they violate the Convention on the Rights of the Child. In the typical environment in which Indian children grow up the concept of a non-working, non-school going child simply does not exist. Any effort to deal with the issue of child labour therefore has to address the question of education.

In this paper we identify schooling as the single most important means of preventing child labour. To this extent we also view the promotion of education and the elimination of child labour as being mutually supportive processes. Consequently, we believe that the relevance of primary education lies in its potential to eliminate child labour. It is in the context of eliminating child labour that we examine the scope of appropriate legislation governing compulsory primary education.

THE EDUCATION POLICY OF THE GOVERNMENT OF INDIA

Elementary education in India is characterised by fictitious enrolment, high drop-out rates and a constantly mounting number of illiterate children. Figures show that although the number and percentage of children attending school is increasing and the number of schools has grown, India's share in the world's illiterates has also risen. In absolute terms, the number of illiterates in the country is increasing as a result of the high drop-out rate among children in the first five years of school. At the same time, corresponding trends are reflected in the statistics of child labour, where despite various laws regulating and even prohibiting it, child labour flourishes with more and more children entering the workforce each year.

It is against this background that the Government of India through its plans and strategies has been grappling with the problem of bringing children to school. From the beginning, the question to which academicians and policy makers have addressed themselves is, "How does a poor country like India design an education policy and strategy which will include

the children of the poor as well as the better off?" In the process of answering this question policy makers and educationists have uniformly justified the existence of child labour and accepted the inevitability of children's contributions to family income through work. The basic argument which is accepted is that the family needs the wage of the child to supplement its income; it is in fact this income which keeps the family going. It would therefore not be justified to deprive the family of its source of income by forcing a child to go to school.

Two major policies which arose out of this conviction were the Child Labour (Prohibition and Regulation) Act, 1986 and the National Policy on Education, 1986. We shall in this paper restrict ourselves to the latter policy although the former is also of some relevance to the issue.

Recognising the "need" for giving access to elementary education to those sections of the population who "cannot" be enrolled into local schools, the National Policy on Education, 1986 announced the continuance of non-formal education (NFE) for working boys and girls as a major thrust area. This constituted an expression of helplessness in the matter of confronting the issue of child labour and additionally gave legitimacy to the employment of children. It also foreclosed any further discussion on the issue of the abolition of child labour and the provision of compulsory education for some time to come. The only apology offered with respect to child labour was to accept its existence as a "harsh reality." The exploitation of children's labour was thus not addressed and instead more and more ambitious and sophisticated policies of non-formal education were designed to reach working children.

NON-FORMAL EDUCATION

A closer look at the details of the NFE programme will serve to highlight these observations. The "clientele" for NFE was identified as "children in habitations without schools, school dropouts, working children and girls who cannot attend school." In the first two years these children, through the NFE centres, were to attain primary school level and in the following three years they were to complete the upper primary level. All instruction was to be by local youth who would work as teachers with a remuneration of Rs. 100 to Rs. 200 per month "with the provision of an annual increment of Rs. 50 after the completion of two years of satisfactory service till remuneration reaches Rs. 500 per month." Apart from the Government, the work of running NFE centres would be done through voluntary agencies and Panchayat Raj institutions.

The NFE programme, in design therefore, has all the elements which in the opinion of the policy makers constitute a "good" programme. It does not interfere with the child's work schedule and at the same time is extremely cost-effective. But design apart, can NFE really achieve what

it has set out to do?

In actual fact the NFE Programme is a low-cost strategy devised more out of financial compulsion than conviction. It envisages the existence of a band of highly creative and imaginative local schoolteachers available in every village, especially in backward districts, who can with ingenuity condense an eight-year course of elementary education to five years. They can accomplish that, too, with only a half-an-hour session every evening or whenever convenient to children, at a salary which is less than one-fourth of what a regular schoolteacher gets. Simultaneously it conjures an image of a working child who is alert and earnestly waiting to attend the evening classes just to lap up all that is taught within half an hour or even one hour, thus catching up with children in the better-off formal schools who attend school for six full hours. Obviously it does not require an expert in education to predict the efficacy of this programme.

While the NFE programme is not the only programme under the New Education Policy, we have focused attention on this system of universalising education mainly because it serves to dramatically illustrate the consequences of the assumptions that have shaped government policy. To what extent are these assumptions valid? In order to examine this we would like to briefly touch upon the experience of the M.V. Foundation (MVF).

THE MVF EXPERIENCE

The MVF has over the last eight years been working in the field of education, especially among working children and bonded labourers. The initial thrust of the programme was almost entirely on the abolition of bonded child labour. The focus over the years has shifted to cover elimination of all forms of child labour through universalising primary education. Each year, the organisation has been conducting mobilisation camps for working children in order to withdraw them from work and admit them at the appropriate levels in schools.

The methodology adopted has been to raise the conscience of men and women in rural areas, particularly parents of working children. Parent and Teacher Committees have been formed and awareness-building training conducted to sensitise all those involved to the issue of child labour. Children's camps have incorporated, apart from teaching activities, a programme of development of leadership quali-

The National Policy on Education, 1986 announced the continuance of non-formal education for working children. This constituted helplessness in confronting the issue of child labour and gave legitimacy to the employment of children.

ties among children. Street plays and campaigns by children themselves to motivate other working children to go to school have also been devised. The MVF programme also involves a strong component of follow-up measures to prevent drop-outs among those who have gone through the camp. In the eight years that the programme has been in operation, over 1,000 children have attended these camps and 3,500 have additionally been motivated to go to school. The latest phase of the programme covers 6,000 children spread over 36 villages.

THE CAMPS HAVE BEEN A revelation and have provided rich material on the attitudes of children, parents and government officials towards the problems of child labour and illiteracy. They have also provided pointers to the basic elements that must be incorporated in any scheme dealing with these problems. In the main, the camps have shown that

- 1) Abolition of child labour and universalisation of school education are practically synonymous.
- 2) Parents of working children are willing to make adjustments to enable their children to go to school.
- 3) The income of a working child is *not* the motivating factor, in most cases, for the parents to send their children to work.
- 4) There is no alternative to using government institutions in order to bring about universalisation of education as NGOs cannot provide the infrastructure on the necessary scale.
- 5) There is considerable scope for involving the village community in universalising elementary education.

It is instructive to examine the implications of the MVF experience in the context of the Government approach to universalising primary education.

Time and again, the annual camps of the MVF have demonstrated that children who are normally assigned the status of victims of the "harsh reality" of child labour are willing to go to school.

The first significant outcome has been that a large number of children have been motivated to join schools. In fact, even children engaged in the most exploitative form of work, bonded labour, have been withdrawn from work and admitted to schools. Time and

again, the annual camps of the MVF have demonstrated that children who are normally assigned the status of victims of the "harsh reality" of child labour *are willing to go to school*. Importantly, parents are willing to make such sacrifices as are necessary to ensure that children continue in school.

While it would be difficult for the MVF to claim that these results would hold in any situation, the fact remains that over a period of eight years positive results have been observed with respect to 5,000 children. Obviously the argument of the harsh reality of child labour has been overemphasised.

The second aspect which the MVF experience emphasises is the existence of a demand for education in rural areas even among parents belonging to the economically weaker sections of the society. Field experience shows that parents have not only disposed of assets such as cattle to enable their children to continue in school but have also stood up to the employers of the children when they attempted to enforce contractual obligations against loans advanced. In the extremely feudal and backward setup that prevails in the villages of the Rangareddy district of Andhra Pradesh where MVF activities are concentrated, this is no small sacrifice.

It is against this experience that we assert that the failure of the NFE programme lies not in its faulty execution. In fact, its greatest failure is in its assumption that labourers cannot be withdrawn from work and therefore have to be given the benefits of education *outside* working hours. The fact that there is an unfulfilled demand for formal education even among the poor in rural areas has been totally denied in this attempt to expand primary education. There is a singular lack of faith in the fact that people, even poor people, value education and learning and are prepared to make extraordinary sacrifices to educate their children.

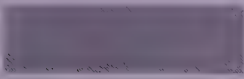
We turn to the implications that these observations have with respect to compulsory education.

LEGISLATION FOR COMPULSORY PRIMARY EDUCATION

The issue of compulsory education has always been something of an enigma. At the theoretical level very few disagree that all children should receive education, at least upto the primary stage, or with the fact that children should not work. In fact, the State has committed itself not only to the universalisation of primary education but also to the abolition of child labour through various pronouncements, not the least of which are the Directive Principles of State Policy enshrined in the Constitution of India. This commitment has been further strengthened by the fact that India is one of over 150 countries to have ratified the Convention on the Rights of the Child, which articulates a series of children's rights including the right to compulsory and free primary education. In spite of all this, the general attitude of policy makers has been that

the country cannot afford the distraction of a compulsory education norm. A number of reasons are given for this, but two major objections are worth noting. The first questions the role of the State in determining the manner in which the children are to be educated. The second stresses the inability to implement such legislation which would relegate it to legislation on paper only.

As far as the first objection is concerned, in a society where the State has always played a significant role in shaping the social behaviour of citizens through legislative means, it is difficult to question the desirability of the State's intervention with respect to education. Today, in our country there is legislation on issues ranging from minimum age of marriage to protection of civil rights and abolition of the category of untouchables. For the State to legislate on an issue concerning a child's right to development, would not be something out of the ordinary.

 **THE** SECOND OBJECTION, however, merits a more detailed examination. It has been observed that in this country a large number of laws governing social issues have been passed but have never really been implemented. Although these laws have been developed to control undesirable social practices, the State has not been able to guarantee effective enforcement. Any number of examples ranging from the SITA (Suppression of Immoral Traffic Act) to BLSA (Bonded Labour System Abolition) can be cited to illustrate this. Legislation to provide compulsory education, therefore, is likely to meet a similar fate. Further, it is argued that legislation governing compulsory education may be used as an instrument of harassment against the parents.

These arguments view the issue from one side only, namely that of administration. Social activists have, however, long viewed legislation of this nature as a means to compel the State to take action. The BLSA, for instance, has proved to be an extremely powerful weapon for NGOs to deal with the problem of child bonded labour in situations where the State has not been prepared to take *suo motu* action.

Thus, even though appropriate legislation may not necessarily mean that the objectives of the legislation will be achieved, its very existence creates an *enabling provision whereby the State can be compelled to take action*. At the very least such legislation reflects the commitment of the State to

promote an ideal and progressive value system. More importantly, such legislation provides others working in the field with a legitimacy which otherwise would not exist. The importance of this aspect can be appreciated with respect to all those activists who have utilised the BLSA to release bonded child labourers. Thus, while administrators and academicians may lament the inability to implement social legislation, the fact remains that the BLSA has lent enormous strength to many of the activists working in the area of bonded labour.

Legislation to provide for compulsory education, therefore, would be of immense value in situations where the efforts of the State are constrained in responding to the requirements of the people. We have already seen that the government response to the problem of illiteracy and child labour has been quite equivocal. On the other hand, our experience in the field has shown that there exists an enormous unrecognised demand for formal education and that parents are willing to make sacrifices to utilise educational opportunities. As long as the existing infrastructure can meet the demand there is no crisis but the fact is that, more often than not, the infrastructure is inadequate.

For instance in the limited area wherein our organisation alone is functioning, we would require educational facilities for over 6,000 more students. Taking the existing facilities into account this would mean at least 60 more classrooms and teachers. Under the present circumstances there is absolutely no way in which we can compel the State to provide these facilities. We, thus, have a situation where the same parents and children who have been written off as victims of the harsh reality of socio-economic circumstances are demanding educational facilities and the State itself is either unable or unwilling to respond. It is in this context that we feel there is a need for suitable legislation binding the State to provide compulsory education. ■

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Child slavery in India

Swami Agnivesh

Bonded Labour Liberation Front, New Delhi, India

DEMOCRACY

and its three pillars — liberty, equality and fraternity — enshrined in the Constitution of India are relatively meaningless in view of the fact that 120 to 140 million children are working in this country. Of these, 55 million children between the ages of six and 14 are languishing in servitude. They are employed mostly in agriculture and industries such as carpet weaving, brassware manufacture, glass- and bangle-making, leather, gem cutting and polishing, matches and fireworks, stone quarries, brick kilns and handloom.

Socio-cultural factors, including the abominable caste system and ethnic and gender discrimination, are responsible for the perpetuation of the scourge of child labour. These factors exercise a significant negative influence, worse even than socio-economic factors such as grinding poverty, unemployment and illiteracy. Little wonder that 90 per cent of bonded child labourers belong to untouchable castes and tribes.

In India, the phenomenon of child bondage was exposed in 1984, only after the sordid plight of 32 bonded children was brought to public notice by the Bonded Labour Liberation Front (BLLF) through a writ petition in the Supreme Court of India. These ill-fated children, aged six to 12 years, were kidnapped from Chhichori village in Palamau district of Bihar and were bonded to a loom owner of Belwaria village in Mirzapur district of Uttar Pradesh. The hapless children were beaten with bamboo sticks, hung upside down from a jackfruit tree and branded with red-hot iron rods.

ABSTRACT

According to **Swami Agnivesh**, 55 million of India's child workers are languishing in servitude. Child bondage is associated with caste, ethnic and gender discrimination. This phenomenon was first exposed in 1984 by a non-government organisation, the Bonded Labour Liberation Front. Subsequently, the organisation began working in the carpet belt and has been engaged in releasing bonded children and restoring them to their homes. The author argues that child servitude is as much an outcome as a cause of poverty, unemployment, rapid population growth and illiteracy. He emphasises that no government can scale down adult unemployment without curbing child labour. Similarly, if bonded children are not released and enabled to be educated, 55 million children will grow up to be illiterate and impoverished adults. The South Asian Coalition for Child Servitude, which was formed in 1989 and is made up of over 100 NGOs from the subcontinent, has launched several measures to combat child servitude in the region. Swami Agnivesh expresses deep distress at the inadequate efforts being made to address child bondage especially as Constitutional guarantees and the laws of the land provide for the protection and development of all children.

We found that this was not an isolated instance. The entire carpet belt, the Mirzapur and Bhadohi area, benefits from the labour of bonded children. So the BLLF entrenched itself in this area and took up the challenging and difficult tasks of redeeming children from slavery, restoring them to their native places and rehabilitating them. It was observed that there was a continuous inflow of children to the carpet industry from Bihar and that there was an organised cartel engaged in procuring children through dubious means, including kidnapping and supplying these children directly to carpet manufacturers. This practice has been continuing uninhibitedly and is a blatant violation of Articles 15(3), 23, 24, 39(e), 39(f) and 45 of the Indian Constitution and prohibitive laws, viz, the Bonded Labour System Abolition Act, 1976, and the Child Labour Regulation Act, 1986.

Currently 300,000 children are engaged in the carpet manufacture sector alone. Through direct measures including persuasion, raids and court injunctions, more than 7,000 children have been released and returned to their homes. Some NGOs are involved in the rehabilitation process being conducted by State Governments.

It is commonly maintained that child servitude is a harsh reality, fostered by socio-economic and historical compulsions. It is believed that four factors, namely poverty, unemployment, population growth and illiteracy, are the main reasons for this malady and that their redress is a prerequisite for eliminating child servitude.

But we argue the other way. Our direct experience and findings from various studies conducted by researchers, corroborates the fact that child servitude is equally, if not solely, responsible for causing and perpetuating unemployment, poverty, population growth and illiteracy.

Today in India we have 55 million children in servitude on the one hand and an equal number of unemployed adults, on the other hand. According to rough estimates, the respective figures of these phenomena have been running parallel since 1947. At that time the number of child labourers was approximately 10 million and the number of unemployed adults was roughly equal.

No Government can scale down adult unemployment without curbing child labour. This is so because the maximum job opportunities created every year are preferentially given to children as their physical and mental vulnerability makes them easy to exploit. In addition, children represent the cheapest source of human labour. Our logical apprehension is that if we do not eradicate child servitude today, we will be responsible for perpetuating the poverty, abject misery and ill health of 55 million adults in the country.

IT SHOULD BE NOTED THAT THE growth rate of the population is much higher among those communities in which unemployment is rampant. Obviously, if child labour is not controlled, impoverished parents will continue to succumb to the 'necessity' of enlarging the number of earning members in the family.

Similarly, there exists a correlation between illiteracy and child servitude. In areas where there are more job opportunities for children, the drop-out rate in schools is extremely high. If we do not liberate 55 million children from their jobs today, we will be responsible for keeping them illiterate for their entire lives. Thus, the natural corollary is that the level of illiteracy cannot be reduced without eradicating child servitude.

NEW DIMENSIONS

It has been observed that child servitude is not peculiar to India; it exists in the entire South Asian Region. This observation mobilised some NGOs in India, Pakistan, Nepal, Bangladesh and Sri Lanka to link up and work against the exploitation of children. The South Asian Coalition

on Child Servitude (SACCS) was formed in 1989 with more than 60 member NGOs from these countries. Now it has more than 100 NGOs as its constituents. SACCS is headed by Kailash Satyarthi.

In India, an aggressive anti-carpet campaign was launched; the premises of manufacturers were raided, children were liberated and their rehabilitation started. In addition, the issue has been publicised widely and political will has been generated for the total eradication of this menace. SACCS's partner in Bangladesh has taken up the issue of child employment in their garment industry.

SACCS has launched some credible measures to combat child servitude. It undertook a 2000-km marathon march in February 1993. The march aroused a considerable amount of awareness among adults and children.

Another novel measure adopted in 1993 by this organisation was to generate political will among contestants for seats in the State Legislative Assembly of Uttar Pradesh under the banner of Save Childhood. It was the first time in Parliamentary history that a written commitment was obtained from candidates pledging that they would make efforts to abolish child labour and enact a law for the free and compulsory primary education of children below the age of 14. Those who were averse to this campaign were blacklisted and their names were published in the local newspapers along with an appeal not to vote for them. In the current [as on March 1994] Uttar Pradesh assembly, 437 MLAs including the Chief Minister, Mr Mulayam Singh Yadav, and the Leader of the Opposition, Mr Kalyan Singh, are signatories.

It is heartening to report that foreign NGOs, especially those in Germany, Britain, the United States, Sweden and the Netherlands, have taken up the cause of child servitude seriously and created pressure on their governments and parliaments for the enactment of suitable legislation banning the import of products made by children. As a result of this movement, the Tom Harkin Bill has been introduced in the U.S. Senate seeking a ban on the entry of products made by children.

The European Parliament is considering a similar resolution. These developments have agitated industrialists and traders of export products, as well as some members of the top echelons of the Government of India. In some cases, frantic

Today in India we have 55 million children in servitude on the one hand and an equal number of unemployed adults, on the other hand. No government can scale down adult unemployment without curbing child labour.

efforts have been made to slow down the passage of legislation by using dubious means. In other cases diabolical propaganda against human rights organisations and eminent social activists has been carried out.

For the last several years we have been pressuring the Government of India to appoint a National Commission on Bonded Labour, to include children, vested with the power to identify, release and rehabilitate victims of bondage. But all efforts have, so far, been in vain.

We have been unable to accept the attitude of the Government when our demands are in consonance with Constitutional Guarantees and the provisions of the prohibitive laws of the land.

Let the conscience of my countrymen also revolt against the abomination of child slavery and force the powers that be to act — now. Let children in the workforce be replaced by adults and let children be granted free and compulsory schooling with all necessary incentives. ■

Sale of children: The exploitation of child labour

Charuront Wannuan

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ABSTRACT

In his paper on the sale of children and their exploitation, Dr Charuront Wannuan defines 'sale' as the transfer of a child from one party to another in exchange for financial or other reward or compensation. The sale of children includes their sale for adoption and marriage, for prostitution and cheap bonded labour. The exploitation of child labour amounts to sale because the child becomes the object of a transaction in cash or in kind. Children are most extensively exploited in Asia and South America where they work primarily in the non-formal sector and small scale industries. At the root of child labour lie factors such as poverty, migration, gender discrimination, socio-economic disparities, and criminality. At the international level there are a number of instruments which provide an umbrella of protection for child labourers. In general, the ILO conventions have been strengthened by the Convention on the Rights of the Child. There are many variations at the national level regarding laws prohibiting or regulating child labour. These include aspects such as the age of employment and the types of work allowed. In conclusion the author makes certain recommendations for the prevention, protection and rehabilitation of child labourers. He also argues for stricter law enforcement in the case of child labour.

THE PHENOMENON OF THE sale of children is universal. The tragic circumstances leading to the abuse and exploitation of children cuts across the barriers between the developing and developed world. The issue confronts most societies, although the typology and degree vary from country to country. Children are not only sold or exploited at the national level, but they are also trafficked across frontiers far and wide.

SALE OF CHILDREN

Sale: Concerning the notion of "sale," different interpretations appear in the two major legal systems — common law and civil law systems. The concept of the sale of children has many forms:

- a sale involves a child *sold* by one person (the seller) to another (the buyer);
- a child transferred to another *in exchange for a sum of money or other considerations* which do not constitute the price of the child but which nevertheless represent unjustified profits, for instance, bribes;
- a child is *rented* to another person, for example, for the purpose of sexual exploitation or exploitation of her/his labour when the sum paid is completely unrelated to the work the child has to do;
- a child is *held* until the parent or guardian is in a position to meet a financial obligation.

In order to secure a consensus interpretation, one may use the definition derived from the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery as follows:

"The transfer of a child from one party (including biological parents, guardians and institutions) to another, for whatever purposes, in exchange for financial or other reward or compensation."

Children: It is not a simple matter to define who is a child. This is because age criteria can vary across different systems or different cultures. In addition, there is an admixture of other terms, for example "juvenile", "minor", "adolescent" and "youth".

Nevertheless, as we are all aware it was not until 1990 that the Convention on the Rights of the Child gave in Article 1 the standard concerning the definition of a "child":

".....a child means every human being below the age of 18 unless, under the law applicable to the child, majority is attained earlier."

Sale of Children: Again, as in the notion of “sale” and “children,” different approaches can be seen in regard to the “sale of children”. For instance, one UN document limits the notion to sale for adoption, sale for forced labour and sale for prostitution. On the other hand, one non-government organisation’s report includes the sale of children as their sale for

- adoption and marriage
- prostitution and sexual exploitation
- pornography
- cheap bonded labour
- begging, stealing and other criminal actions
- organ transplants.

In addition, as child labour entails the sale of a child, the following concepts of sale could also be considered: armed conflict; adult criminal activities; forced labour or abducted children; debt bondage; labour in the unorganised sector; labour in the organised sector; child prostitution; pornography and sexual exploitation; forced marriage; disabled children in the labour force; domestic labour; apprenticeship and family-supervised labour.

EXPLOITATION OF CHILD LABOUR

As mentioned above, it is recognised that the exploitation of child labour is a form of sale of children. Generally speaking when one considers the notion “child labour” *per se*, it is not necessarily detrimental to children.

However, when it gives rise to exploitation, usually by another party who has power over the child, it may result in negative consequences for children, both with regard to their rights and their development. It also constitutes sale because the child becomes the object of a transaction in cash or in kind. It appears that, in many parts of the world, children are sold into several types of employment, either by their parents, guardians or other intermediaries.

Children used for labour exploitation are usually lured from particular racial or social groups rather than from the well-endowed groups in power.

Recently, the International Labour Organisation (ILO) estimated that there were some 88 million working children between ten and 14 years of age. Instances of exploitation are to be found in all regions of the world but Asia and South America figure high in the number of children in difficult circumstances. It is noted

that the worst forms of child labour exploitation often take place in the informal sector and small-scale industries.

CAUSES OF EXPLOITATION

Generally, the exploitation of child labour may arise from a variety of root causes, including poverty, migration, gender discrimination and criminality.

Poverty: Much of the exploitation appears to be a consequence of the pervasive poverty in developing countries. Likewise, economic needs push children to undertake exploitative work in developed countries. As children are cheaper and easier to employ, adults are kept out of the labour market.

Migration: According to the notion of “globalisation,” at present, it appears that people have become more mobile, travelling easily to other countries. This mobility is also reflected in their search for jobs. As a result, it leads to the emergence of migrant labourers and immigrants shedding new light on the old problem of child labour.

Gender Discrimination: In many societies the preference for boys, coupled with a chauvinistic attitude towards the development of women, often places girls at a disadvantage. Viewed by many countries as having lower priority, the girl child is usually denied access to educational and occupational opportunities which could protect her from labour exploitation.

Socio-cultural Disparities: With respect to the sale of children for exploitative child labour, socio-cultural disparities may also contribute to the sale of children. Many societies display historical injustices and traditional taboos. The phenomenon has racial and social origins, interwoven with issues of class and caste and the remnants of slavery. It is obvious that children used for labour exploitation are lured from particular racial or social groups, rather than from the well-endowed groups in power.

Criminality: As one commentator has noted, the sale of children is the product of crime. Although child labour has been with us from time immemorial, criminal syndicates and individuals are manipulating children in new ways as instruments of crime. The use of children to sell drugs, to steal and to commit other offences is probably an apt example of this situation. Much of it is linked to corruption within national systems and some law enforcement authorities colluding with criminal elements. This is compounded by the fact that although various countries have laws to protect children, there is a huge gap between the norms and existing practices; many countries suffer from poor law enforcement. The exploitation of child labour is often the product of such deficiencies and related vested interests.

INTERNATIONAL SCENARIO

At the international level, various instruments provide an umbrella of protection for child labourers. Under the auspices of the ILO, a series of conventions and recommendations on the exploitation of child labour has been developed. One key convention is Convention Number 138 which establishes 15 as the basic minimum age of employment, although reduction to 14 may be possible in developing countries. The ILO conventions and recommendations have been strengthened by the advent of the Convention on the Rights of the Child. The CRC emphasises anew the issue of sale linked with child labour. Article 32 states that "children should be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." The Convention calls for the stipulation of pluridisciplinary measures, for example, legislative, administrative, social and educational measures to:

- a) Provide a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulations of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

In the case of migrant workers, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 also protects those in irregular situations, for instance, those employed without proper documents in another country; they retain their rights *vis-à-vis* their employers, even in such a context. Although various legal frameworks have been established, the issues of implementation and programme planning to realise specific targets remain.

Implementation: The 1990 World Declaration on the Survival, Development and Protection of Children, highlighted the need for specific programmes of action at the national level. In addition, the UN Commission on Human Rights adopted the Programme of Action for the Elimination of the Exploitation of Child Labour in 1993. This Programme of Action advocates a number of measures which should be implemented, particularly at the national and local levels. These include the following:

- Information campaigns to raise awareness of the problem;
- Educational and vocational training to prevent child labour exploitation;
- Social action to help families and their children;
- Development aid;

- Stipulation and application of labour standards;
- The adoption by States of appropriate policies and programmes, for example, provision of primary education for all;
- Support from international agencies.

Moreover, in terms of programming, in Islamabad in November 1992, the International Labour Office, within its interdepartmental project on the Elimination of Child Labour, helped to organise the Asian regional seminar on Children in Bondage, which developed and adopted a Programme of Action Against Child Bondage. The Programme of Action advocates the following measures:

Legislation:

Review the adequacy of existing legislation. In particular, the following aspects should be covered:

- Definition (the various forms of bondage)
- Objective (its total abolition)
- Specification of sanctions
- Compensation of victims
- Liquidation of debts and other obligations
- Enforcement machinery, for example measures for speedy trial
- Enabling provisions for the establishment of special courts
- Adverse publicity for violators
- Establishment of rehabilitation schemes

Enforcement:

Establish mechanisms to promote and monitor enforcement, e.g. vigilance committees, task forces

- Strengthen the judiciary
- Provide appropriate penalties to deter violations
- Publicise violations
- Complement legal machinery with public awareness campaigns and the dissemination of information
- Provide information and training for targeted groups, e.g. officials of implementing authorities, the judiciary, trade unions, religious groups
- Conduct research and studies

Education, training and rehabilitation:

- Make primary education universal, compulsory and free
- Facilitate access to schooling through allocation of additional resources
- Provide incentives to parents to send their children to school
- Allocate greater resources to education
- Promote public awareness of the value of education
- Implement child labour and compulsory education laws

- Establish rehabilitation programmes including counselling services
- Provide non-formal education, vocational training, credit facilities and social services
- Establish transit and rehabilitation centres
- Develop a code of good practice for employers
- Promote and implement prevention, prohibition and rehabilitation programmes

Advocacy and community mobilisation:

- Adopt a policy to eliminate bonded labour
- Develop advocacy and social mobilisation campaigns using the media, training programmes, investigative studies.
- Mobilise specific groups, including employers and workers and their organisations, parents, government, judiciary, community groups, social and political institutions, through targeted information campaigns
- Establish networks among concerned groups.

National Scenario:

Concerning laws prohibiting or regulating child labour, it appears that these vary in aspects such as the age of employment and the type of work allowed. The enforcement of such legislation is often weak, and tends to cover only the formal sector. In 1993, instances of rampant child labour exploitation were found in both developing and developed countries, though the extent varied according to the region.

In South Asia, the issue of child marriage was raised several times in 1993, particularly concerning customers buying young brides. The plight of child domestic workers and transnational trafficking of children emerged throughout the year. There is also a demand factor regarding South Asian children, both local and transnational, particularly with customers from the Middle East countries. In addition, numerous concerns were expressed in relation to children trafficked for camel racing in the Gulf countries. In this respect, however, there has been a positive initiative: the United Arab Emirates recently banned the use of child jockeys and ordered that they be returned home.

In East Asia, the sale and trafficking of children for labour exploitation is still rampant both locally and across borders. The issue is closely linked with the sex market.

In Africa, the exploitation of child labour in the informal sector was reported in various countries in 1993. In particular, the girl child is a victim of exploitative domestic service. At times, there is a link with the remnants of slavery, such as the sale of children for forced labour, particularly from certain ethnic groups.

In Central and South America, the number of children at work is large, especially as there is a vast population of street children. There were disturbing incidents of killings of street children during the past year. In this region, too, the problems of child domestic workers and the use of children in the informal sector are rampant. At the other extreme, children are at times employed to sell drugs.

In Europe, the problem of child labour exploitation poses a challenge to many countries. This includes a specific linkage with children used as instruments of crime and as domestic workers.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions: In this paper an attempt has been made to examine various areas of the sale of children due to child labour exploitation.

The general observation gained is that while there are national and international laws, including various Plans and Programmes of Action which cover most of the situations, law enforcement leaves much to be desired. In addition, the existing laws tend to be remedial rather than preventive.

Recommendations: In relation to the sale of children for child labour exploitation, the following recommendations are offered:

General: States, national and international organisations are invited to bear in mind strategies of prevention, protection and rehabilitation in curbing the exploitation of child labour. All strategies involve short- and long-term planning, implementation and evaluation.

Realisable goals depend upon close coordination, adequate budgetary allocations and willingness to cooperate between the national and local levels, including federal and state links.

Prevention: A key priority for action in the short-term, with long-term implications, is in the area of prevention. States along with national and international organisations should promote anti-poverty strategies, improved flow of information, universal primary education, community consciousness raising, mobilisation, the satisfaction of basic needs, occupational opportunities and alternative forms of employment for families.

Protection: Protection of children from child labour exploitation depends upon adequate and effective laws and policies together with their implementation at the national and local levels. All countries already have laws which can be used to protect children, for instance, the criminal law. These should be implemented in a more committed manner. The quality of the law enforcement authorities, namely

police force, immigration authorities, judges, inspectors and others, needs also to be improved.

In relation to transnational child labour exploitation, improved links between INTERPOL and national police are required to identify transnational networks. Moreover, extradition arrangements should be expanded so as to facilitate the transfer of alleged criminals to face charges in the country where the abuse has taken place.

Rehabilitation: States and national and international organisations should take remedial action to help children who are exploited. This may include juridical remedies, such as prosecution of abusers, and the provision of legal aid and assistance, and/or socio-medical remedies such as the provision of hospices, counselling and other support facilities. On another front, appropriate spiritual remedies, for example, religion, should also be considered as a tool to counter problems.

Facilities should be provided to help those with health problems, including HIV/AIDS. These may include medical and community facilities to help children and their families, as well as measures to protect them against discrimination and other harm. Emphasis should be placed upon family-based and community-based rehabilitation rather than State institutionalisation.

Particular attention should be paid to child trafficking. This entails proper safeguards, including independent monitoring and follow-up, for children to be returned to their country of origin. Pending their return to the country of origin, they should not be treated as illegal immigrants by the receiving countries but dealt with humanely as special cases of humanitarian concern. Upon the children's return, the countries of origin should treat them with respect in

accordance with international human rights principles.

Other Measures:

In relation to child labour, the whole range of measures advocated by the UN Commission on Human Rights' Programme of Action for the Elimination of the Exploitation of Child Labour, 1993 should be implemented.

There should be stricter law enforcement in the case of child labour, with more incentives for exemplary law enforcement personnel. All vestiges of bondage should be eradicated, and attention should be paid to the plight of the girl child. The Programme of Action against Child Bondage, 1992 should also be placed as a priority for all parties concerned.

More emphasis should be placed on the plight of domestic labour, particularly in regard to children; laws may be required to prevent abuse in this field. Again, their basic human rights should be protected.

Illegal, or undocumented child labourers should get greater protection. They should be deported to their country of origin only if their safety and basic human rights are guaranteed. This should be seen in the context of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990. ■

Particular attention should be paid to child trafficking. This entails proper safeguards, including independent monitoring and follow-up, for children to be returned to their country of origin.

Child Survival And Development



DUDLEY HARRIS

Implementing children's nutrition rights

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ABSTRACT

In his paper on implementing children's nutrition rights, Dr George Kent observes that while the idea of the right to food appears in many different contexts in international law, most are not binding. Our principal obligation towards children, he says, is to promote their development. With respect to identifying who is responsible for children, the author defines a hierarchy of agencies from the family to international governmental organisations which represent "nested rings of responsibility" with the child at the centre. The author emphasises that as a matter of principle, there should be a recognised legal obligation of government to provide services to ensure that every child is adequately nourished. There is a distinction between soft and hard rights in that the latter imply clearly spelt out implementation and accountability mechanisms. Accountability must follow the "carrots, not sticks" approach, that is, it must be positive in orientation. According to the author, reporting on the status of nutrition rights should cover five components — nutrition problems, programmes, law, implementation, and accountability. Speaking of goals as rights, he observes that there is a positive requirement for progressive realisation of goals based on clear plans and the commitment of resources commensurate with a nation's capacity: poor countries cannot be excused from pursuing child nutrition goals. The Government of India has tried many different kinds of approaches to alleviate malnutrition, some successful, some not. One major lesson is that where programmes are not held to account and required to show their effectiveness, they lose sight of the original intended target. A sustained campaign needs to be launched to strengthen children's nutrition rights in India. The planning process to ensure nutrition rights should have three components: situational analysis, goal setting and strategy formulation.

TWO ARTICLES IN THE CON-
vention on the Rights of
the Child address the issue of nutrition. Article 24 says that
"States Parties recognise the right of the child to the
enjoyment of the highest attainable standard of health" and
shall take appropriate measures "to combat disease and
malnutrition" through the provision of adequate nutritious
foods, clean drinking water, and health care. Article 27 says
that States Parties "shall in case of need provide material
assistance and support programmes, particularly with re-
gard to nutrition, clothing, and housing." India is making
steady progress in limiting malnutrition, but the numbers
are still too large and the rate of progress is too slow.

NUTRITION RIGHTS

In 1948 the Universal Declaration of Human Rights said
in Article 25(1) that "everyone has the right to a standard of
living adequate for the health and well-being of himself and
his family, including food..."

The International Covenant on Economic, Social, and
Cultural Rights, which came into force in 1976, says in
Article 11: "The States Parties to the present Covenant
recognise the right of everyone to an adequate standard of
living for himself and his family, including adequate food,
clothing, and housing..." and also recognise "the fundamen-
tal right of everyone to be free from hunger..."

While the idea of the right to food appears in many
different contexts in international law, most are not binding.
In some cases, as in the International Covenant on Eco-
nomic, Social, and Cultural Rights, the obligations are
technically binding on the States Parties. However, because
the obligations lack specificity and because there are no
effective mechanisms for implementation and accountabil-
ity, they are not binding in practice.

On reviewing the hunger data, Philip Alston and Katarina
Tomasevski observed that "these statistics make hunger by
far the most flagrant and widespread of all serious human
rights abuses." The idea that people should have a right to
adequate nutrition is an old one, one whose vision has not
been fulfilled. However, its articulation in the Convention
on the Rights of the Child suggests a new approach:
Implementation of the idea of the right of adequate
nutrition may be more politically feasible if it focuses on
children.

NESTED RINGS OF RESPONSIBILITY

Our principal obligation towards children is to promote
their development, to be understood as empowerment or
increasing self-reliance. The task is to increase children's
capacity to define, analyse, and act on their own problems
until they can become independent participants in society.

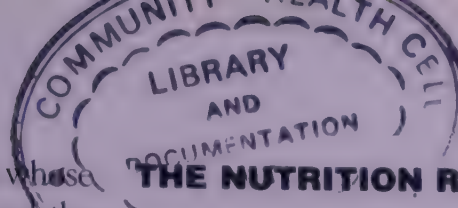
Who is responsible for children? The question is not whose fault is it that children suffer so much (who caused the problems?) but who should take action to remedy the problems? Many different social agencies may have some role in looking after children, but what should be the interrelationships among them? Most children have two vigorous advocates from the moment they are born, and even before they are born. Their parents devote enormous resources to serving their interests. In many cases, however, that bond is broken or is never created. Fathers disappear. Many mothers disappear as well. In some cities, hundreds of children are abandoned each month in the hospitals in which they are born. Bands of children live in the streets by their wits. Often children end up alone as a result of warfare or other political crises. Many children are abandoned because they are physically or mentally handicapped. Often parents become so disabled by drugs or alcohol that they cannot care for their children.

Children ought to get their nurturance from their parents. Failing that, they ought to get it from their local communities. Failing that, they ought to get it from the local governments. Failing that, it should come from their national governments. Failing that, they ought to get it from the international community. The responsibility hierarchy thus looks like this:

child
family
community
local government
state government
national government
international nongovernmental organisations
international governmental organisations

We can picture this as a set of nested circles, with the child in the centre of the nest. The idea that needs to be added is that in cases of failure, agents more distant from the child should not simply substitute for those closer to the child. Instead, those who are more distant should try to work with and strengthen those who are closer to help them become more capable of fulfilling their responsibilities towards children.

The very outermost ring includes international governmental organisations (IGOs) such as UNICEF, the Food and Agriculture Organisation, the World Health Organization, and the United Nations Committee on Human Rights. The international community is the last resort, the outer ring of responsibility in looking after the well-being of children. Where there are large scale failures, and where national governments will not or cannot do what needs to be done, the international community has a positive obligation to intervene.



THE NUTRITION RIGHTS VISION

Childhood malnutrition is one of those issues for which there should be a recognised obligation of government to provide some sort of services. As a matter of principle, there should be a recognised legal obligation of government to provide services to assure that every child is adequately nourished. The point is that there should be a clear duty of government, enshrined in law, to do what needs to be done if the family's and the community's response is inadequate. If the principle is accepted, there will still be a need for discussion of the exact nature of the services and the conditions under which they must be provided.

Community groups working on the local malnutrition problem should be able to rely on their local and state governments for help, whether for money, contacts, transportation, or moral support and encouragement. It is the responsibility of government to help such community groups. Moreover, the government should be grateful for the opportunity to help the community use its resources to deal with local malnutrition.

There have been efforts to gain recognition of a right to nutrition within individual countries and internationally. Unfortunately, this has often been equated with the general effort to alleviate malnutrition, and advocates of the right to nutrition have simply recommended ways of improving the production and distribution of food. Nutrition rights in international law are vague and soft. If the nutrition rights idea is to be implemented within nations, its meaning will need to be clarified in their national law. It is there, in national law making, that the specific, hard commitments can be made.

IT IS IMPORTANT TO DISTINGUISH between the achievement of adequate nutrition and achievement of a right to adequate nutrition. Nutrition rights are based on the quality of protection one has against the occurrence of malnutrition. To assess the quality of the protection one has to look into the institutional arrangements that are in place, ready to act if and when disaster threatens. Past efforts to ameliorate malnutrition have all been valuable, but they have been matters of charity.

The motivating idea underlying the nutrition rights vision is that extreme malnutrition can be reduced by establishing clear rights to adequate nutrition in the law, and assuring the implementation of that law.

The nutrition rights approach does not replace existing programmes for alleviating malnutrition, but rather it builds on and uses them. It can make feeding, health and education-based nutrition programmes more efficient and



effective by making them more decisively goal-directed to end malnutrition.

According to UNICEF's 1993 report, *The Progress of Nations*, on average, developing countries have been devoting only about 10 per cent of their annual budgets to human priority issues: nutrition, water supply, primary health care, primary education, and family planning. Thus even poor countries could do more with their existing resources. The main argument of the rights approach, however, is not that nations should spend more but that they should spend better.

This rights approach to dealing with the malnutrition problem might be criticised for being statist and top-down in its orientation. I agree that much of the work of combating malnutrition should be carried out with those who are poor and weak directly, through programmes of empowerment.¹ I am concerned, however, that working exclusively on the empowerment of the weak may tend to absolve government of its responsibilities. The appropriate response, then, is strategies of empowerment of the weak. The law can be used as one means for helping to empower the weak.

SOFT AND HARD RIGHTS

A clear distinction should be drawn between the broad notion of children's interests involving many different things such as shelter and a nurturing environment, and the more limited subset of those things that are — or should be — formally recognised as rights in law. Soft rights are not spelt out in the law, or if they are there is no strong and effective mechanism to assure their implementation. The CRC and other international human rights instruments in themselves establish only soft rights. They can be transformed into hard rights which are clearly articulated in the law and are accompanied by effective implementation and accountability mechanisms. Hard rights have a history of case law through which the meaning of the right is tested and refined. There is clear recourse in law for

individuals whose rights are not fulfilled, and clear public accountability. There must be means for calling the government to account if it fails to provide reasonable protection.

Rights are important because without clear rights, those who are more powerful, more highly educated, or better connected have

an advantage in obtaining services. Clearly established rights empower the weak, levelling the playing field a bit so that the weak are not so disadvantaged.

Rights can be truly hard only where there is a strong and effective legal system in place. In many countries there is no such system. However, where it is absent it is nevertheless worth advocating the hardening of rights as part of the broader effort to pursue a civil society.

MULTI-LAYERING

As indicated in the rings of responsibility image, local agencies trying to deal with malnutrition should be backed by higher level agencies to the extent necessary to assure that the problem is solved. This can be done in an orderly way. Nations can establish their own rights systems, with specific criteria and rules that apply to all their citizens. The international community can develop a rights system so that nutrition-related services to its member nations are based on clear criteria and rules favouring the weakest among them.

In much the same way, many nations are divided into smaller jurisdictions, perhaps provinces or states; these smaller units might be able to establish their own nutrition rights systems. Provinces could then be assessed in terms of their nutritional status, and the most needy provinces entitled to specific services. In some cases provinces, in turn, might manage their nutrition rights system by focussing on still another administrative layer — districts within the province.

Laws, rules, guidelines and principles can be introduced or adapted to conform to a nutrition rights system at the global, regional, national, state or district levels. Even the rules of access to individual service programmes can be modified to assure that clients are treated as if they had rights to the service.

Just as different levels have different responsibilities, they also can have different rights. For example, some services might be assured to individual children while others are assured for households, villages, or districts. Thus multi-layering means there are distinct nutrition rights and responsibilities, both within units and across units, in a hierarchical structure.

CARROTS, NOT STICKS

The nutrition rights idea, while based on the use of the law, is not based on punitive sanctions against wrongdoers. There may be some cases in which children go hungry because they have "bad" parents. In such cases, the law should be more concerned with ensuring that children do not have to pay for the sins of their parents than with ensuring that their parents do have to pay for them. In much

Without clear rights, those who are more powerful have an advantage in obtaining services. Clearly established rights empower the weak, levelling the playing field a bit so that the weak are not so disadvantaged.

the same way, it would be foolish for the international community to think about punishing bad governments.

To the extent possible, government's approach to its citizenry should be in positive forms. Similarly, the citizenry's "holding the government to account" should be positive. In a negative approach to accountability, a government agency assigned the duty of preventing abuse or ending malnutrition could be sued or fined in some way.

In a more positive approach, designated non-governmental organisations could be given an award or "bounty" of a small sum of money for each needy child they find and present for services.

MONITORING AND REPORTING ON NUTRITION RIGHTS

It is important to distinguish between monitoring and reporting on nutrition status and monitoring and reporting on nutrition rights. In my view, reporting on the status of nutrition rights should cover five distinct but interrelated components: (a) the nutrition problems; (b) government's service programmes in response to the nutrition problems; (c) the law relating to nutrition rights; (d) implementation, the extent to which the law is effectively carried out; and (e) accountability, the institutional arrangements for holding government to account in fulfilling nutrition rights.

Assessing Nutrition Problems

It is important to know what categories of individuals suffer from what sorts of malnutrition problems. The most important form worldwide, protein-energy malnutrition, can be gauged by measuring the heights and weights of children and comparing them with the heights and weights of well-nourished children.

Assessing Service Programmes

If nutrition rights exist, there must be government-sponsored services to assure that people are adequately nourished. Services should be preventive, to keep malnutrition from occurring, and remedial, to undo malnutrition after it occurs. Preventive services may include such things as health education, water supply, or immunisation programmes, or programmes to keep people from being displaced from their land. Remedial services for those who are malnourished or at risk of malnutrition may include feeding programmes, clinics or land reform programmes.

There are several things one would want to know about government-supported service programmes related to nutrition. It would be useful to have information about their targeting and selection of beneficiaries; staff

selection, supervision and training; community participation; management information systems; sustainability and replicability; and their impact and cost.² In systematic reporting, nutrition service programmes should be listed and then characterised, following a simple outline to specify their main features.

Given the magnitude of the malnutrition problem and the level of resources available, judgments should be made as to whether the eligibility criteria are too high, too low or about right.

Given the magnitude of the malnutrition problem and the level of resources available, judgments should be made as to whether the eligibility criteria are too high (excluding many who should be served), too low (including many who should not be served), or about right.

Many nutrition programmes concerned with protein-energy malnutrition as indicated by low weight or low height are misdirected in terms of their intended coverage. Growth failure is most active between six and 24 months of age, which is thus the main "window of opportunity" for prevention.³ Actions targeted to children beyond, say, three years of age are not likely to be very successful in reversing their growth retardation because their low weight or height is likely to have originated in their first two or three years of life.

Assessing the Law

Nutrition rights must be enshrined in the law with as much clarity and detail as possible, specifying not only the rights of citizens but also the specific duties of government to fulfil those rights. Of course one must also look further to see if what is written in the law is effectively implemented.

Clear nutrition rights can be developed for different kinds of malnutrition. For example, in countries known to suffer from marked iodine deficiency, laws could be established to require government to assure that salt is iodised and other measures are taken for those who show signs of iodine deficiency. In some cases, where communities are likely to be responsive, the law may require nothing more than systematic growth monitoring to make sure that the community identifies children in need of special attention.

Reporting for the international human rights agreements should include descriptions of the ways in which national law has been or is in the process of being modified to take account of the commitments made by the nation upon becoming party to the international agreement.

Assessing Implementation

Often laws that are on the books are simply ignored. Promises may be made but not implemented. Thus it is important to study the extent and effectiveness with which the law is carried out. This means going back to the government's service programmes and reviewing them not in terms of their own state goals but in terms of the goals set out in the law.

Assessing Accountability

In a complete system of rights, means must be established for holding government to account if its duties are not fulfilled. It is important to strengthen the law regarding nutrition rights in the books, and also to strengthen the use of that law by assuring that it is fully implemented. Hard rights require effective mechanisms of accountability.

In addition to asking whether there are government agencies which regularly assess the performance of the nutrition service programmes, we should also inquire whether there is clear legal recourse for individuals who do not get the services to which they are entitled.

GOALS AS RIGHTS

People of different nations suffer from different types, intensities and distributions of malnutrition, with differing causes. Moreover, they have different resource bases and they all have many other concerns. Thus they will set their goals for dealing with malnutrition differently. However, there is now a broad global consensus on how these goals should be framed. At the World Summit for Children held at the United Nations in New York in September 1990, most heads of state signed the Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children. Among the major goals specified in the plan was the following: "Between 1990 and the year 2000, reduction of severe and moderate malnutrition among under-five children by half."

In a complete system of rights, means must be established for holding the government to account if its duties are not fulfilled. It is important to strengthen the law regarding nutrition rights.

Supporting goals specifically related to nutrition were:

- (i) Reduction in severe, as well as moderate malnutrition among under-five children by half of 1990 levels;
- (ii) Reduction of the rate of low birth weight (2.5 kg or less) to less than 10 per cent;

- (iii) Reduction of iron deficiency anaemia in women by one-third of the 1990 levels;
- (iv) Virtual elimination of iodine deficiency disorders;
- (v) Virtual elimination of Vitamin A deficiency and its consequences, including blindness;
- (vi) Empowerment of all women to breastfeed their children exclusively for four to six months and to continue breastfeeding, with complementary food, well into the second year;
- (vii) Growth promotion and its regular monitoring to be institutionalised in all countries by the end of the 1990s;
- (viii) Dissemination of knowledge and supporting services to increase food production to ensure household food security.

These eight "supporting goals" have merit in themselves and also can be viewed as important means towards achievement of the major goal. These goals have been endorsed repeatedly, both before and after the World Summit for Children, by many international bodies including the World Health Organization Assembly in 1990, the UNICEF Board Session of 1990, the United Nations Conference on Environment and Development in 1992, and the International Conference on Nutrition in 1992.

Many nations do not have adequate baseline data for 1990, and in any case have little hope of achieving the goal of reducing severe and moderate malnutrition to half the 1990 level by the year 2000. Nevertheless, the basic form of the language can be retained, with a fresh start and a new commitment.

Consider now a transformation in thinking. Imagine that the nation's commitment to the goal of the reduction of severe and moderate malnutrition among under-five children by half over the next 10 years is so serious that it is willing to assure its citizens that they have a right to its achievement. Imagine that the government is willing to take on the achievement of this goal as a real duty, one on which it could be called to account for its performance.

Of course it may be that the goal is too demanding, and the government is not willing to make such a firm commitment. For the purposes of this discussion, other formulations could be substituted. For example, the government might be willing to make such a strong commitment only if it was limited to children under two years of age, or only if it was limited to severe malnutrition. The specifics are open to discussion. The point here is that, whatever the details of its formulation, one way to interpret nutrition rights is in

terms of a firm commitment to a specific nutrition goal.

This perspective meshes nicely with the argument that poor countries are not to be excused from assuring nutritional and other economic, social, and cultural rights on the grounds that they can not afford it. Instead, there is a positive requirement for progressive realisation of the goals based on clear plans and the commitment of resources commensurate with the nation's capacity. Accountability is based on monitoring to see if good progress is being made towards achievement of the goal. If the programme is not "on track" there should be some legal mechanism for calling the government to account and pressing it to take the action that is required.

NUTRITION RIGHTS IN INDIA

Mr A.T. Dudani of the Society for Citizen Concerns has been exploring the prospects for strengthening children's nutrition rights in India. Through his efforts, a question regarding the current status of children's nutrition rights was raised by Mr V.K. Hariprasad in Parliament in December 1993. The question was:

"Will the Minister of Human Resource Development be pleased to state: (a) whether Government is enforcing and promoting various programmes for the Convention on the Rights of the child and if so, the steps taken in this direction and results obtained and achieved; and (b) whether the nutrition of children is receiving full attention and if so, the details of any action plan made state-wise?"

The answer, prepared by the Department of Women and Child Development and provided on December 7, 1993, in the Lok Sabha and December 10, 1993 in the Rajya Sabha, was as follows:

"The Government of India has ratified the UN Convention on the Rights of the Child. Appropriate legislative and administrative measures are being taken for implementing the Convention by the concerned Ministries/Departments.

"A National Plan of Action for Children has been adopted under which goals have been fixed for the decade 1990-2000. The Plan seeks to cover the programmes in the areas of child and maternal health, nutrition, water and sanitation, education, children in difficult circumstances and adolescent girls. All sectors have reviewed their programmes for strengthening, keeping in view the goals set in the National Plan of Action for Children.

"A number of child care programmes for improving the nutritional status of children are being implemented. The Integrated Child Development Services (ICDS) programme is a major intervention for providing a package of services including supplementary nutrition to 16.3 million children

under six years of age.

Nutrition supplementation is also being provided to children under the scheme of creches (3,00,000 children) and Balwadi Nutrition (2,29,000 children). A new initiative to improve nutritional status of adolescent girls has been started, on a selected basis, in 507 ICDS Projects.

Again, through nutrition education programmes the mothers are also being educated and empowered to look after the nutritional needs of their children better.

"The Department has identified 180 focal districts in the country based on the criteria of poverty, concentration of Scheduled Castes and Scheduled Tribes and high crude birth rate. While expanding Child Care Programmes, preference is given to these focal districts."

THE REPLY OFFERED IN PARLIAMENT discussed the situation with regard to nutrition-related programmes, but more is needed to fully address the question of nutrition rights. It is also important to know something about the nutrition problems, the relevant law, the extent to which the law is implemented, and the mechanisms of *accountability* for ensuring that the law is implemented.

The Government's statement confirms that the level of effort has been high, but it does not address the question of effectiveness. As in other countries, targeting is always difficult. It is expensive, and it can be politically unpopular. According to an overview of India's nutrition programmes prepared for the World Bank, "direct nutrition expenditures per child were pitifully low precisely in the very states that account for a larger share of the nation's severely malnourished children."⁴

The productivity of expenditures intended to alleviate malnutrition should be systematically assessed so that individual programmes can be adapted for greater effectiveness and reallocations can be made towards more productive programmes.

India has tried many different kinds of approaches to alleviate malnutrition, some successful, some not. One major lesson is that where programmes are not held to account and required to show their effectiveness, they lose sight of the original intended target. The argument here,

According to an overview of India's nutrition programmes "direct nutrition expenditures per child were pitifully low precisely in the very states that account for a larger share of the nation's severely malnourished children."

however, is not that an entirely new programme of action should be launched, but that the programmes in place that are supposed to help alleviate malnutrition should have their effectiveness assessed more systematically and should be held accountable for their performance.

At the outset, existing programmes should be examined to determine where the rules of access could be adapted to conform more closely to a system of rights. To illustrate, one promising possibility is in Tamil Nadu, where the Tamil Nadu Integrated Nutrition Programme (TINP) was introduced in October 1980. It focuses on feeding children at nutritional risk as demonstrated by growth faltering based on weight-for-age. In July 1982, the Government introduced the noon meal programme, covering all children between two and five years of age regardless of their nutritional status. In September 1984, coverage was expanded to include all poor children going to school, up to the age of 15. The new service protocol, based on careful targeting of services, has proven effective:

"Children ages six to 36 months were weighed each month....Supplementary feeding was provided immediately to those who were severely malnourished, and feeding for children with faltering growth was provided after one month (for children ages six-12 months) or three months (for children ages 12 to 35 months). The children selected were fed for at least 90 days. If they failed to gain at least 500 grams in weight, they were referred to health care, and feeding was continued for up to 180 days. Intensive nutrition education was directed at mothers of at-risk children. Food supplementation was also offered to women whose children were being fed, to those who had numerous children, and to those who were nursing while pregnant.

"The project cut severe malnutrition in half and prevented many at-risk children from becoming malnourished."⁵

Participants were fed only when required, with the result that food was only 13 per cent of the project's total cost.

India has tried many different kinds of approaches to alleviate malnutrition. One major lesson is that where programmes are not held to account and required to show their effectiveness, they lose sight of the original target.

In the view of Dr. Anuradha Khati Rajivan, Collector in the Pudukkottai District:

"In the state of Tamil Nadu, it is now possible to think of the feeding programmes for children as entitlement programmes. Here the term entitlement is being used in the sense of a right, something accepted by the

society and political leadership and which is unlikely to be questioned for reasons of resource constraints...Budgetary pressures have not led to cutbacks for the feeding programme... The noon meal programme now has a first call on the state budget along with food subsidies of the public distribution system and electricity subsidies."

IT IS STILL NOT A HARD RIGHT because there are no explicit laws assuring children of this entitlement and providing some recourse in case the right is not fulfilled. However, it might not be difficult to make those adaptations. The number of beneficiaries has been increasing steadily, straining the budget. If it becomes necessary to limit the categories of those eligible, it may at the same time be feasible to provide legal assurances for those who are designated as eligible.

A sustained campaign could be launched to strengthen children's nutrition rights in India. Participants in the initial planning meeting should include officials from the relevant ministries and government agencies, representatives from non-governmental organisations concerned with law, human rights, children, and nutrition, and representatives of key governmental and non-governmental international organisations. All will have roles to play in the effort. The purpose of the campaign would be to put an end to extreme malnutrition among India's children through the establishment and effective implementation of clear laws regarding children's nutrition rights.

The planning process could have three major components: a review of the existing situation with regard to children's nutrition rights, goal-setting, and the formulation of a strategy for meeting the goal. Goal-setting should be informed by the nutrition goals set out in India's National Plan of Action for Children and other relevant national and international documents. Alternative formulations should also be considered.

The implications of adopting a particular nutrition goal as a right should then be worked out in terms of the strategy, the programme of action that would lead to its achievement. The legislature should not be presented only with a vague goal, but should be asked to make a firm commitment to the complete package.

A radical approach to strategy formulation could be based on semi-privatisation of the effort. If the government decides it really wants to end extreme malnutrition among children it could have that effort managed by a semi-private organisation under contract. The operators of this "Nutrition Rights Corporation" would have a performance-based contract such that they would be fully compensated only if they were successful. The government could specify the goals and set out detailed ground rules, and then put out a formal request for proposals for providing the service, in effect putting the task out to bid. This method could be

tested and refined in two or three states with strong support from the central government. In time, a full multi-layered system could be established, with separate management corporations for each state, all functioning under the guidance of a central headquarters office. While the goal-setting and operational guidelines would be established centrally, much of the planning and execution could be decentralised and highly participatory. The bidders would have room for creativity regarding these issues.⁶

Even if it is politically infeasible, thinking in this way suggests the sort of business-like thinking that is needed. Close attention must be given to the bottom line of achieving reductions in malnutrition, just as any business venture must give close attention to the bottom line of profitability. Clear and strong incentives need to be established to assure that the goal is pursued efficiently and effectively. Personally, however, I like to think this approach to ending extreme malnutrition is about as feasible as putting a person on the moon.

India has excellent nutrition programmes "on the ground" and devotes substantial resources to the alleviation of malnutrition. However, the purposes of these programmes vary a great deal. As any military commander knows, assets on the ground become more effective if they are coordinated and goal-directed, all pointing in the same direction. India's resources for alleviating malnutrition could be used more efficiently and effectively if they were organised in a goal-directed programme based on clear nutrition rights. ■

NOTES

[1] See, for example, my article "Nutrition Education as an Instrument of Empowerment," *Journal of Nutrition Education*, Vol. 20, No. 4 (July/August 1988), pp. 193-195.

[2] These dimensions are discussed in Joan Jennings, Stuart Gillespie, John Mason, Mahshid Lofti, and Tom Scialfa, eds., *Managing Successful Nutrition Programmes* (Geneva: United Nations Administrative Committee on Coordination/Subcommittee on Nutrition, 1991).

[3] John Mason, "Nutrition and Food Aid," *SCN News*, No. 10 (Late 1993), pp. 1-8.

[4] K. Subbarao, *Improving Nutrition in India: Policies and Programmes and Their Impact* (Washington, D.C.: World Bank, 1989), p. 77. Also see Barbara Hariss, *Child Nutrition and Poverty in South India* (New Delhi: Concept Publishing, 1991).

[5] World Bank, *World Development Report 1993: Investing in Health* (Washington, D.C.: World Bank, 1993), p. 80.

[6] For example, the strategy could be one of empowerment, based on facilitation of local efforts to systematically assess, analyse, and act on the malnutrition problem. See UNICEF, *Strategy for Improved Nutrition of Children and Women in Developing Countries* (New York: UNICEF, 1990), and Urban Jonsson, *Nutrition and the United Nations Convention on the Rights of the Child* (Florence, Italy: International Child Development Centre, 1993).

Sex selection: Legal and ethical issues

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SEX SELECTION IS THE "original sexist sin." Sex-selective abortions have become a significant social phenomenon in several parts of India, China and South Korea. In north and west India, the twin processes of "elimination of unborn daughters" and the "slow killing" through neglect and discrimination of those that are born, may soon precipitate a major demographic catastrophe. Urgent remedial efforts need to be initiated and sustained. The present deficit of women in India is greater than the entire female population of Britain.

Thanks to the all-pervading influence of patriarchy, sex selection has transcended all barriers of caste and community, and even the North/South dichotomy. Sex pre-selection clinics employing modern medical technology have already spread to countries of the North and the South. Cross-cultural studies of the attitudes of the providers and users of sex selection technology reveal few basic differences between the North and the South. The issues at stake are numerous — social, demographic, cultural, and political. The most urgent are the fundamental right to life, the survival of half of humankind and the right to equality. It involves all of us — men and women, North and South, experts and the lay public.

THE CASE FOR REGULATION

Sex selection does not infringe upon "women's right to choose the sex of their offspring" because such a "right" does not exist. Victims of sex-selection (mainly Third World women) have no basic right of participation in decision making in matters such as education, marriage, and contraception. It is insulting to them to impose this "choice" which has been created by researchers, "techno-docs" and patriarchy to serve their own interests.

Practically and conceptually, sex selection cannot be treated as a family planning tool nor can the matter be left as being "personal"; the personal is indeed very political in this context. Discrimination and subjugation on the basis of gender is a real social problem. There can be no technical solutions to it.

Legal solutions, however, are possible and indispensable. The significance of consciousness raising among and self-regulation of medical experts needs no elaboration. The enactment and enforcement of comprehensive legislation prohibiting sex selection is an essential responsibility of the State as it has an obligation to uphold the right of all citizens to equality and to ensure their freedom from discrimination.

It should be motivated by public interest in order to prevent the social damage which may be occasioned by a sex ratio that is adverse to women. Appropriate legislation

ABSTRACT

The rapid spread of sex determination technologies coupled with the neglect of girl children could potentially precipitate a demographic catastrophe. Prof Ravindra R.P. makes a cogent case for the legal regulation of sex pre-selection techniques. He argues that the elimination of female foetuses is a perverted symptom of patriarchy rather than evidence of women exercising their freedom of choice. He emphasises that it is the responsibility of the State to enact and enforce comprehensive legislation prohibiting sex selection. Describing the experience in Maharashtra, the author observes that the passage of legislation, despite inherent weaknesses in the relevant Act, has had a visible positive impact on regulating and controlling prenatal diagnostic techniques for sex determination. In conclusion, the author makes some suggestions towards making the Central law, which remains to be enacted, more meaningful, comprehensive and implementable. He states that the passage of progressive legislation is a necessary if insufficient condition to contain the spread of medical technology that is detrimental to the status of women.

would initiate the long pending task of mobilising the complex process of regulating medical (especially reproductive) technology in India. It would provide the much needed space for discussing more intricate and controversial issues such as surrogacy, *in vitro* fertilisation and genetic engineering. Progressive laws are always several steps ahead of popular public perception. So "offending public opinion" and fears of the inability to implement these statutes should not be used to retard efforts to develop legislation.

After more than a decade of nationwide campaigning, assurances by four Prime Ministers and a dozen Union Ministers, and several attempts at passing statewide legislation, as well as detailed scrutiny of the official Bill by a Joint Parliamentary Committee (the report of which, along with the official bill, was tabled in Parliament in December 1992), central legislation banning sex determination tests is still nowhere in sight. Any further delay by the Government will only confirm our worst fears about its lack of political will. The alternative, as attempted by the terrorists in Punjab who threatened "direct action" against sex determination clinics, is frightening. So the State must act at least to reestablish its authority as the custodian of people's rights.

A LEGAL SOLUTION IS POSSIBLE

The experience of Maharashtra shows that in spite of the inherent weaknesses of the Act and the Government's evident lack of political will to implement it, a law banning sex determination can still be effective. More than 80 per cent of the sex determination clinics stopped business after the enactment of the law. Even when many restarted their business after the Government's inaction for three years, the frequency of sex determination tests had gone down considerably. The minimum cost of the test increased from Rs. 100 to Rs 2,500 after the enactment of the law; the poor and lower middle classes could no longer afford it. Thus, the Act has succeeded in positively stopping the further proliferation of sex determination clinics.

In 1978, the misuse of prenatal diagnostic techniques for sex determination was banned in hospitals and clinics in the government sector. This ban has not been violated in the past 15 years. Thus, restricting the license for prenatal diagnosis to government institutions could aid the appropriate implementation of the Act.

SUGGESTIONS FOR THE BILL

The Act can become implementable provided the following points are taken into consideration:

- i. The woman undergoing a sex determination test, being a victim rather than the perpetrator of the crime, should not be punished under any circumstances;
- ii. Licences for prenatal diagnosis should be restricted to government institutions;
- iii. Concerned individuals and voluntary agencies should be empowered to lodge complaints and monitor the implementation of the Act.

The political will of the legislature and the executive is the single most important factor determining the success of the Act.

CONCLUSIONS

Whatever may be the constraints of the present legal system and the broader social system within which it operates, a comprehensive nationwide law on sex determination is both essential and possible. The law is by no means an end in itself, nor will it be sufficient to tackle the misuse of new reproductive technologies effectively. Although monitoring thousands of sex determination clinics spread all over India is almost impossible, indicting one or two culprits might send the right signals to the medical community, which we are confident would be willing to follow the law. ■

Indian women's struggle to survive: Campaign against femicide

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THE CONTINUOUSLY DECLIN-
ing sex ratio has been a
major cause of concern among socially conscious demog-
raphers, policy makers and women's organisations. For the
last one and a half decades women's groups, health groups,
scholars of women's studies, medical anthropologists and
democratic rights organisations have made combined ef-
forts to sensitise different sections of society about the
increase in the number of cases of female infanticide and
selective abortion of female foetuses in India. But those
factors which actually caused a qualitative change in the
consciousness of important decision-making bodies were
consistent campaigns against female infanticide in Rajasthan
and Tamil Nadu by rural women's groups, the efforts of the
Forum Against Sex determination and Sex pre-selection in
Ahmedabad, Baroda, Bombay, Delhi, and the work of
various groups and individuals, for example, scientists, lab
technicians, doctors and nurses, in Mysore, Bangalore,
Raipur, Madras, Surat, Pune, Jaipur, Chandigarh and
Ludhiana.

Testimonies of women who "voluntarily" opted for sex-
linked abortion of female foetuses gave new insights into
the complexities of dealing with the issue. The utter
powerlessness of women against the ideological onslaught
of patriarchal forces perpetuated through customs and
traditions, proverbs and myths, folklore and folk-songs, the
horror stories of dowry harassment, and the escalating
violence against women convinced the campaigners that
the problem needed to be addressed at different levels.
Through their literature, debates with doctors in the print
and electronic media and on public platforms, negotiations
with government bodies, public meetings, and creatively
organised programmes involving children and adults, the
campaigners highlighted the following issues :

ABSTRACT

Various professional groups and human rights organisations have engaged in creating public awareness about female infanticide and sex-selective abortions of female foetuses. The efforts of women's groups in Rajasthan and Tamil Nadu as well as those of the Forum Against Sex Determination and Sex Pre-selection, have resulted in a significant qualitative change in the consciousness of important decision-making bodies. Campaigners have brought to light the utter powerlessness of women who "voluntarily" opt for sex-linked abortions. Dr Vibhuti Patel enumerates the different levels of target groups addressed and the mix of media that was used in order to highlight a range of issues relating to sex pre-selection. These issues include the fact that support for new reproductive technologies amounts to femicide and that the need for enactment of legislation against the abuse of scientific techniques that contribute to the growing demographic imbalance between the sexes.

- Scientists who uncritically support new reproductive technologies such as Amniocentesis, chorion villi biopsy, fetoscopy and sexpreselection techniques in the name of advances in medical science need to realise that they are aiding and abetting the process of femicide. Moreover, they are tampering with the natural demographic process which could lead to disastrous social consequences.
- Techno-docs who promote non-reproductive technologies for commercial reasons cash in on anti-women biases which reduce the Indian woman to a "male-child producing machine." They treat a healthy woman as raw material, not as a human being, converting her into a pathological case. They violate the code of medical ethics by violating women's dignity and bodily integrity.
- Advocates of population control whose target is to achieve a Net Reproduction Rate of 0 (NRR 0) by

supporting femicide and whose cynical logic is "Fewer women = Lesser Procreation" have placed Indian women in the category of "endangered species."

- Economists who apply "the law of demand and supply" and recommend that the reduction in the "supply" of women will enhance their status need to review anthropological evidence which shows that the regions in India where the sex ratio is extremely adverse are notorious for some of the most inhuman practices against women. These include forced polyandry, gang rape, abduction, dowry murders and the degraded status of widows and deserted women.
- Sceptics who maintain that legislation against the abuse of scientific techniques for femicide will not change anything, need to realise that the law will take away any respectability attached to these tests and empower

social action groups to get money-minded doctors and laboratory owners punished.

- Human rights organisations need to take cognisance of the fact that the survival of Indian women is at stake. As per the 1991 Census, India recorded the lowest sex ratio of the century. The organisations need to get involved in creating an amenable atmosphere for the passage of Central legislation banning the abuse of sex determination and sex pre-selection tests. The important thing is to eliminate inequality, not women.
- Several committees at the state level, a high powered committee at the central level and a 22-member all-party Parliamentary Committee have submitted their considered reports and recommended the enactment of the Central legislation. Now, it is a matter of political will. ■

Human rights and the girl child

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ABSTRACT

While there are several constitutional safeguards that support the human rights of Indian citizens, existing social, economic, administrative and legislative arrangements are sometimes inadequate with respect to protecting these rights. Of all demographic groups, the girl child is probably the most socially disadvantaged. At every stage of her life cycle — from conception to adulthood — she is especially vulnerable to human rights abuses. Dr Vasudha Dhagamwar argues that it is necessary to protect the rights of the girl child — particularly her right to be born, her right to remain alive, her right to protection from neglect and abuse, her right to a secure family environment as well as her right of access to education and information. Invisible forms of exploitation, such as the girl's involvement in domestic labour and sibling care, deserve special attention. The author suggests various measures that would have to be instituted in order to prevent the infringement of girls' rights. These measures include the provision of free and compulsory education together with child care services, the firmer enforcement of existing laws and the articulation of pertinent new legal measures. Creating public opinion regarding the abuse and exploitation of girls, the author concludes, is a critical condition for protecting girls' right to childhood.

THIS PAPER CONCENTRATES on the rights of girls in India with some reference to girls in other parts of the world.

BACKGROUND OF THE RIGHT TO LIFE IN INDIA

The Indian Constitution promises all those who dwell in India the right to life. Article 21 reads:

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

In several cases¹ the Supreme Court of India has stipulated that the right to life as enshrined in the Constitution is the right to live with dignity, and includes all aspects which contribute to making a person's life meaningful, complete and worth living.

How far is this right available to the Indian girl child?²

Normally the right to life is defined as the right to live with dignity as described above. Poignantly, in India and in a country like China, this right literally means the right to be born and remain alive, for the girl child is unwanted. Her birth is treated as a calamity.

The girl child's first right is the right to be born and not to be aborted purely because she is a girl. So far there are no fail-safe ways of preventing the misuse of foetal sex determination through amniocentesis or ultrasound tests to ensure this right.

The girl's second right is the right to remain alive after birth and not be killed quickly in her first few hours, or killed slowly by neglect or indifference. Female infanticide still continues, as the falling ratio of girls to boys, recorded by our census, indicates.³

The girl's third right is the right to life as guaranteed by Article 21 of the Indian Constitution. Properly interpreted, as far as the girl child is concerned, Article 21 encompasses her right to her body, her right to her mind, her right to childhood and her right to a family and a home. The right, in fact, to grow up normally, naturally, and freely.

PROTECTING THE RIGHT TO LIFE

Freed from rhetoric, these rights can be understood thus:

The right to one's body includes protection from criminal assault, including rape, prostitution, physical and psychological violence, and forced beggary, all of which are inflicted both within and from outside of the family. The right to one's body also includes freedom from harmful traditional practices such as mutilation which is widely

practised in Arab-African countries in order to control female sexuality.

These practices come under the purview of criminal law.

There are provisions in the Indian Penal Code against enforced beggary, but implementation is weak. The large number of children begging on the roadside in urban areas bears testimony to this fact.

The rape of minor girls (less than 16 years of age) and their induction into prostitution (before age 18) are punishable under the Indian Penal Code. The accused may not plead that the girl gave her consent or was exercising free choice. But these laws, especially those dealing with rape, are not implemented for various sociological reasons.

While there is some enforcement of the law in situations where offences are committed by outsiders, there are few safeguards to protect the child from offences committed against her by family members. There is no law against incest. The enforcement of these laws would require a very effective and efficient system for providing economic relief, welfare services, and social education or conscience raising. Unfortunately such a situation does not exist in the current social and economic context.

The right to the body includes protection from marriage at a tender age. Currently the legally permissible age for girls to marry is 18 years. The large number of marriages performed in rural India between child brides and child bridegrooms is too well known to need any comment. Under the Child Marriage Restraint Act 1929, the guardians of the children given in marriage are liable to punishment, but the marriage remains legal and binding. The Hindu Marriage Act and Muslim Personal Law allow the girl to repudiate her marriage at puberty. A Hindu girl may do so even if her marriage has been consummated. Given her social circumstances even if a girl knows the law she is unlikely to exercise this right. Unless child marriages are declared illegal, just as polygamous marriages are illegal for non-Muslims, child marriage will continue to destroy the lives of our girls.

The right to one's body also encompasses the right to nutrition and clean water, the right to health services and to proper child care. Being left to the tender mercies of a slightly older child does not constitute proper child care, in addition it deprives the older child of her rights. We, in India, have no laws that guarantee any of these rights.

The right to one's mind includes the right to education. This right is not guaranteed in India. There is no compulsory universal education for children. In government schools it is free, but parents are not compelled to send their children to school. Statistics show that parents send far fewer girls to

school than boys. Vast numbers of boys also drop out by the time they are 14 years old.

The right to one's mind also implies the right to information, whether about law, health care, or opportunities. This right implies freedom from the duties of being a child minder and assistant cook-cum-house-keeper. It also implies the right to a career. Currently, women and girls only play secondary roles in the traditional occupations. A girl is never a carpenter or a smith in her own right. The right to one's mind is not recognised by our laws.

The right to childhood means the right to be free from working at a tender age. This right requires tougher, more comprehensive, more effective, better thought-out legislation against child labour. At the moment there is no ban on using children for domestic service or paid housework. There is no ban on daylong household work within the family or on the responsibility of caring for younger siblings. There is no ban on agricultural labour. There is no ban on child labour in industries except in a few hazardous occupations. In short, there is no ban on child labour within or without the family, even up to the age of fourteen.

THE GIRL CHILD IS SERIOUSLY affected by the absence of suitable legislative protection. The burden of household work and child care falls almost exclusively on her. She works at fetching fuel, fodder, and water, watches the pot on the fire, and looks after her younger brothers and sisters. All this means that the girl child has hardly any time to play, or to be a child. In particular the girl child requires freedom from domestic drudgery and freedom from the tyranny of her family. She requires both mental and physical space to grow. There are no laws that guarantee children this freedom. Such a law would require two things — a massive exercise in educating parents to rethink their attitude to children, and a complete restructuring of our welfare services and financial allocations. We have not even started thinking about how household work, which is usually dismissed because it is seen as being light and normal, fits into this scheme.

The right to family and home would mean the right to shelter. While all children are entitled to this right, it has particular significance for the girl child living on the roadside, making her far more vulnerable to sexual assaults. The right

The girl child requires freedom from domestic drudgery and freedom from the tyranny of her family. She requires both mental and physical space to grow.

to family and home would guarantee the right to be brought up by one's parents in a protected environment. If a child has no parents, she should have the right to be adopted and given a family, or to be looked after by the State.

Neither the right to shelter nor the right to care is guaranteed in India. Indeed even the Convention on the Rights of the Child speaks of the right to adoption and the right to housing in very guarded terms. The latter right is subsumed under the right to a standard of living. The right to adoption is subject to religious beliefs and the right to a standard of living is subject to the economic constraints of the State. Article 20 of the CRC deals with a child's right to a family environment. Sub clause 1 of this Article reads:

- A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

This provision is diluted by sub-clauses 2 and 3 which follow:

- States Parties shall *in accordance with their national laws* ensure alternative care for such a child. [emphasis added.]
- Such care could include, *inter alia*, foster placement, Kafala of Islamic Law, adoption, or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard should be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Although these principles sound unobjectionable their impact can be seen in the lamentable fate of the Indian Adoption Bill which was twice prevented from being passed because it was seen to infringe upon the religious belief of one

minority or another.⁴ The rights of the orphan or abandoned child take second place when compared to the right to freedom of religion.

Article 27 sub-clause 1 declares unconditionally that:

- States Parties recognise the right of every child to a standard of living ad-

equated for the child's physical, mental spiritual, moral and social development.

Once again sub clauses 2 and 3 dilute the contents of the first sub-clause:

- The parent(s) or others, responsible for the child have the primary responsibility to secure, *within their abilities and financial capacities*, the conditions of living, necessary for the child's development. [Emphasis added.]
- States Parties *in accordance with national conditions and within their means* shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing. [Emphasis added.]

It is depressing to note that while child labour is still being justified in certain quarters, including by proponents of child rights on the grounds of financial necessity, the ability of the State or the parents to give a reasonable standard of living to the same child is made conditional on their economic capacity. Section 127 of the Indian Criminal Procedure Code requires a parent to support a minor child only if the parent is able and the child unable to do so.

IT GOES WITHOUT SAYING THAT while children of both sexes are adversely affected by the attitudes which are embodied in the laws, the girl child suffers most.

Thus on the legal front the girl child faces the following problems:

- All aspects of a child's development are not protected by law, irrespective of its sex;
- There are no laws that discriminate in her favour to give added protection;
- There are laws but these are not implemented;
- The economic and welfare structure that is absolutely essential for securing implementation of laws does not exist;
- New social and familial attitudes that are essential for the optimal development of the child have yet to be inculcated;
- Sometimes all of the above factors are present in one situation — as when the girl child is denied the right to education. We have to look for ways to overcome these shortcomings and guarantee the girl child all these rights.

The Indian Adoption Bill was not passed because it was seen to infringe upon some religious beliefs. The rights of the orphan or abandoned child take second place when compared to the right to freedom of religion.

CHILD SURVIVAL

RECOMMENDATIONS FOR ENSURING THE RIGHT TO LIFE

The Right to be Born: Stricter supervision of genetic laboratories and clinics that conduct prenatal sex determination tests is needed. It will also be necessary to educate society to treat girls and boys equally.

The Right to Remain Alive: This would require registration of birth and speedy investigation of the causes leading to a girl child's death. As is done in dowry deaths, a girl child's death should by definition be treated as suspicious. A post-mortem should be required.

All this necessitates extended medical services for all children. Laws must be enacted to ensure provision of creches and *balwadis* in the countryside where women work on the land. Medical services and welfare services must be expanded. As with the right to be born, the right to remain alive can only be enforced if parents, family and society at large are taught to value daughters.

Right to Live with Dignity: In the case of criminal offences against children, stiffer sentences must be prescribed. Education must be made free, compulsory and universal. This may require a carrot-and-stick policy. That is, incentives will have to be combined with penalties to persuade parents to send children, especially daughters, to school. If this is done, the drudgery of the child within and outside the family will automatically decrease. Provision of creches and *balwadis* will also free older girls from providing child care.

Child marriage must be declared illegal. If parents can no longer be sure of permanently disposing of the girl at a young age, they will not be so quick to get her married.

All this requires pressure on the Government to reallocate resources for welfare. A law is only as good as its enforcement infrastructure. Courts cannot enforce laws that require large financial commitments, such as the construction of schools, hospitals or training of *anganwadi* workers, health workers, nurses, doctors or teachers. Pressure has to be brought to bear upon appropriate bodies such as the Planning Commission to provide adequate financial allocations.

Finally, none of this will work unless continuous efforts are made to re-educate the adult community which controls the lives of children. ■

NOTES

[1] Re Sant Ram Vs Union of India AIR 1960 S C 932.

Maneka Gandhi Vs Union of India AIR 1978 S C 597.

Francis Corelli Vs Union of India AIR 1981 S C 746.

[2] This writer would like to record her awareness of the fact that boys also suffer from these or similar problems.

[3] Sex Ratio (Female per 1000 Males), India, 1901-1991

Year	Sex Ratio
1901	972
1911	964
1921	955
1931	950
1941	945
1951	946
1961	941
1971	930
1981	934
1991	929 *
* Provisional	

SOURCE: Ashish Bose: *Population of India 1991 Census Results and Methodology* (1991) B.R. Publishing Corporation, Delhi.

[4] Both these attempts were made in the 1970s.

Measures To Implement The Convention On The Rights Of The Child



DUDLEY HARRIS

The function of law in promoting the rights of the child

C.F.G. Sunaryati Hartono

Indonesia

PROTECTION OF THE INTERESTS OF THE CHILD IN INDONESIAN LAW

Long before the Convention on the Rights of the Child, Indonesians were convinced that the future of our people and that of the Indonesian state would lie in the hands of the next generation. Therefore we can find in our Constitution, which dates from the year 1945, that :

- Every citizen has the right to obtain an education (Article 31 part. 1);
- Orphans, the poor and neglected children shall be cared for by the State (Article 34).

In 1969, the first Five Year Development Plan already contained nationwide programmes for the improvement of the health and welfare of mothers and children. It not only included family planning programmes, but health-care programmes for each village in the country. The continuous care plan for children has changed the situation of Indonesian children, as compared to the 1920s or 1930s, when our children looked undernourished and unhappy. Nowadays even children in the villages look quite happy, well-clad and alert.

In 1979 a special Act on Child Welfare, Act No. 4 of 1979, was promulgated and a Presidential Decree dated July 23, 1986 declared 1986 to 1996 as the Child's Decade. During this decade much has been done to improve the welfare of children.

ABSTRACT

In Indonesia, the first Five Year Development Plan in 1969 proposed nationwide programmes for the improvement of the health and welfare of both mothers and children. In 1979 a special Act on Child Welfare was promulgated and a Presidential Decree in 1986 declared 1986 to 1996 as the Child's Decade. During this decade much has been done to improve the welfare of children.

Dr C.F.G. Sunaryati Hartono points out that there are numerous provisions dealing with the rights of the child in various Indonesian laws, for example those relating to education, marriage and crime. For more than a decade the Ministry of Interior has been coordinating a nationwide Family Welfare Programme. The author observes that it is unfortunate that the ideals and norms set forth in the Indonesian Constitution have not as yet been fully implemented due to a lack of human and financial resources. A lot still needs to be done for Indonesia's children, in spite of the fact that in the last 20 years a significant improvement in their situation has been registered. While legislation can contribute considerably towards the betterment of the lot of children, the author concludes, that several other measures — political, economic and social — are needed in order to implement the law effectively.

Apart from these specific legal provisions concerning children, there are numerous other provisions on the rights of children scattered in our laws. For instance, our inheritance law recognises the right of an unborn legitimate child at the time of death of his or her father to become the heir to parental property, upon his or her birth.

Article 45 paragraph 1 of Act No. 1 of 1974 on marriage clearly obliges parents to care for and educate their children as well as they can. This includes the obligation to provide for a religious education, although Article 29 paragraph 2 of the 1945 Constitution states that the State shall guarantee the freedom for every inhabitant to adhere to his/her own religion and perform his/her religious duties.

In Article 47 paragraph 1 of the Marriage Act stipulates that a child, who has not reached the age of 18 years, and who has never been married, shall be under the care of his parents. If not cared for by his/her parents, s/he shall be in the care of a guardian (Article 50 paragraph 1).

Furthermore Article 47 paragraph 2 states that the child shall be represented by his or her parents in all kinds of legal actions.

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In criminal cases, Articles 45, 46 and 47 of the Criminal Code and the Regulation of the Minister of Justice No.M.06.UM.01.06.1983 proclaim the age of 16 years (instead of 18) as the limit up to which a child can be brought before the juvenile court. Conditions governing the juvenile court are as follows:

- The court officials (judge, prosecutors and social workers) shall be professionally educated people, who can sufficiently understand children and are able to give judgements in the best interests of the child's life and future.
- During the trial (investigation) the atmosphere must be such that the child is able to express his/her feelings without fear or shame.

Children must not be separated from their parents or guardians. The severest judgement for the child should not exceed 50 per cent of the maximum sentence for an adult.

- There shall be a separate prison for children, and the judges and prosecutors shall not wear their official robes while trying a child. In prison, the children shall not only receive mental and spiritual education, but shall also be given the opportunity to participate in sports. They shall also obtain help from legal advisors to cater to their welfare and special needs.

In Indonesian juvenile prisons, boy scout and girl guide types of organisations are found. Children even meet once a year to compete.

The Ministry of Interior has, for more than a decade, been coordinating a nationwide Family Welfare Programme, which is conducted in every one of the approximately 23,000 villages throughout Indonesia.

This Welfare Programme concentrates on the following 10 plans of action.

1. Dissemination of the National Pancasila philosophy which encompasses the principles of belief in One Almighty God; humanity; national unity; democracy; and social justice;
2. Social behaviour of brotherhood;
3. Improvement of food production and food consumption;
4. Improvement of production and use of clothes;
5. Improvement of housing facilities and household management;

6. Education and vocational training;
7. Health;
8. Improvement of cooperatives;
9. Improvement of the natural environment;
10. Planning.

This year [1994] the new law on Compulsory Education will be enforced, changing the old regulation, which provided for six years of compulsory primary school education starting at the age of six to nine years up to the secondary school level.

Through this provision we hope not only to upgrade the intellectual capabilities and general knowledge of children, but also to enable them to play and socialise with their friends, rather than work and help their parents in the fields or at home all day. This should delay the marriage age for girls (and boys) from 12 to 15 years to 16 to 18 years or later, just as the marriage age for educated women has in the last few decades changed from 21 to around 27. This has had an overall influence on the health, welfare and education of their children.

IDEALS AND FACTS

Unfortunately the ideals and norms set forth in our constitution, laws, regulations and policies have not, as yet, been completely implemented because of a lack of resources, both human and financial.

However, both the Government and our people are determined to improve the quality of life of our children in the shortest time possible. This takes on special significance because the 1945 generation, which fought for our Independence and is imbued with the ideals of setting up a new State to protect and improve the lives of the people of the new Indonesian nation, is fading away.

Indeed much is still to be done, although in the last 20 years of development we have achieved a significant realisation of our ideals. Many Indonesian children today enjoy better nutrition, better housing, better clothes and better education.

Only in very remote places children at the age of 10 might still be unable to read and write. While there are still some children trying to earn an honest living as newspaper boys,

Unfortunately the ideals and norms set forth in our constitution, laws, regulations and policies have not been completely implemented. We are determined to improve the quality of life our children.

car cleaners, food peddlers, babysitters, household maids, or factory labourers, we are working hard to diminish the number of working children.

As the few examples in this paper show, most of the articles of the Convention on the Rights of the Child have been addressed by laws, regulations and government policies. But it would be simplistic to expect that these laws could automatically change the social and economic situation without financial resources and social support.

The daily news informs us that many of today's social problems of violence, child abuse and sexual abnormality, whether in the United States of America, Europe, India or

Indonesia, stem from the way we have brought up our children.

These problems are not confined only to poor countries. Living in affluence seems to have created almost the same problems. This is why international understanding, cooperation and solidarity is of utmost importance in creating a better future for children all over the world.

In conclusion, we may say that although law in the form of international conventions or national legislation can contribute considerably towards the betterment of the lot of the world's children, we still need other means, notably political, psychological, managerial, economic, social and financial to implement what is stated in the law. ■

UNICEF and the Convention on the Rights of the Child

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THIS PAPER FOCUSES ON UNICEF's role with respect to the Convention on the Rights of the Child. It is hoped that through a better understanding of how UNICEF works within the framework of the Convention, partners such as members of the legal and other professional communities attending this ground-breaking conference, will be in a better position to identify, within their fields of specialisation, specific and priority areas of cooperation for working for and with children.

The broad topics discussed here are:

- a) UNICEF's contribution to the implementation of the Convention
- b) The Convention on the Rights of the Child as a framework for policies and programmes benefitting children
- c) Country programme: The principal vehicle for UNICEF's support in developing countries
- d) Monitoring the implementation of the CRC
- e) UNICEF's cooperation at the international level
- f) Summary of UNICEF activities of CRC
- g) Role of the Regional Office in East Asia and the Pacific.

Article 45 of the CRC states:

"In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

- a) The specialised agencies, the United Nations Children's Fund, and other United Nations organisations shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee (on the Rights of the Child) may invite the specialised agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate, to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialised agencies, the United Nations Children's Fund and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
- b) The Committee shall transmit, as it may consider appropriate, to the specialised agencies, the United Nations Children's Fund and other competent bodies,

ABSTRACT

In her paper, Ms Purificacion Quisumbing discusses the special role of UNICEF in the implementation of the Convention on the Rights of the Child. While UNICEF's primary mission is to respond to the urgent and basic needs of children, it has also developed as a major channel through which child-related issues can find expression at the international level and be addressed through specific programme interventions. UNICEF planning since the adoption of the Convention has been guided by the consensus view of children's rights embodied in the Convention. UNICEF has neither the resources nor the expertise to intervene in every problem area where children are at risk, but this operational reality does not negate the fact that all rights enshrined in the Convention are of concern to UNICEF. The country programme is the vehicle through which UNICEF supports countries in their efforts to transform Convention ideals into legal safeguards and practical programmes benefitting children. UNICEF monitors the situation of children throughout the various phases of the country programming exercise. The data that are generated enable governments to assess their progress towards achieving national goals. Advocacy at the international and regional levels, in addition to that at the country level, has become a part of UNICEF's role through which it tries to engender political support and additional resources for children.

any reports from States Parties that contain a request or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestion, if any, on these requests or indications."

Article 4 of the Convention encourages States to seek international cooperation, where needed to implement economic, social and cultural rights when their own available resources are inadequate.

As the United Nations lead agency for children, UNICEF has a special responsibility in this regard and proposes to continue to encourage those involved in international cooperation to be responsive to States' requests for help and to ensure that their activities in all areas create and support an environment conducive to the optimum development of children.

The Centre for Human Rights is the United Nations body with direct responsibility to assist the General Assembly, the Economic and Social Council, the Commission on Human Rights and the agencies of the United Nations in promoting and protecting human rights, as envisaged in the Charter of the United Nations. The Centre, therefore, has direct responsibility for providing secretariat support to the Committee on the Rights of the Child, which is the monitoring body for the Convention, and for advisory services and technical assistance that the Committee will need or that States may request in order to meet their obligations under the Convention.

UNICEF has responded to the urgent and basic needs of children for over four decades, and while this continues to be the primary mission of the organisation, it has also been developing as a major channel through which child-related issues can find expression at the international level and be addressed through specific programme interventions or advocacy on behalf of children.

The operational capacity of UNICEF, and the expertise

which the organisation has developed through its programmes of cooperation throughout the world, is complementary to the capacity of the Centre for Human Rights to guide States in the technical aspects of implementing the Convention.

UNICEF continues to work with other international agencies,

as appropriate, within the framework of inter-agency cooperation, in assisting Governments to transform the provisions of the Convention into programmes to protect children's rights and to enhance their chances of survival and development.

CRC: A FRAMEWORK FOR POLICIES AND PROGRAMMES BENEFITTING CHILDREN

UNICEF planning since the adoption of the Convention has been guided by the consensus view of children's rights embodied in the Convention. In several countries, the Convention is already enhancing many aspects of programme delivery. Advocacy efforts that preceded adoption have strengthened international cooperation within many governments and have led to new alliances among governments, NGOs and UNICEF. The global goals agreed upon by the international community, and endorsed by the Heads of State and Government attending the World Summit for Children, are essential first steps towards realising the rights outlined in the Convention. However, "the Convention embodies the most comprehensive list of goals for the well-being of children" and "its full implementation is the best guarantee of achieving the goals for children and development in the 1990s."

THE IMPLEMENTATION PROVISIONS of the Convention (Articles 42 to 45) seek to avoid an adversarial approach to children's rights by stressing, instead, dialogue and constructive action at the national level.

The spirit of these provisions was inspired in large measure by the members of the NGO group for the Convention on the Rights of the Child, which promoted the idea that the cooperative approach to implementation would enable countries to become States Parties to the Convention, offsetting the prospect that their possible inability to implement immediately, all provisions of the Convention, would hamper their cooperation and active NGO participation.

In defining the role of UNICEF in implementation, special attention has been paid to the spirit of the debate leading to adoption of the implementation provisions, which advanced the idea that the implementation of the Convention should:

- a) Provide a forum for consideration of relevant policy issues and a framework for action to be taken at the international and national levels by governments, multilateral and bilateral agencies and NGOs;
- b) Provide an opportunity for constructive dialogue to take place on the situation of children, in the communi-

In several countries, the convention is already enhancing many aspects of programme delivery. Advocacy efforts that preceded adoption have strengthened international cooperation within many governments.

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ties where they live and at national, regional and international levels;

- c) Facilitate the provision of technical assistance that States may require to enable them to meet their obligations under the Convention; and,
- d) Stress the importance of implementation at the family and community levels.

COUNTRY PROGRAMME: THE PRINCIPAL VEHICLE

In a number of countries, there is growing public interest in the rights of children, and indications are that there is political will to act on implementing the Convention. UNICEF has neither the resources nor the expertise to intervene in every problem area where children are at risk, but this operational reality does not negate the fact that all rights enshrined in the Convention are of concern to UNICEF. The Convention's holistic view of children underscores the need for governments and United Nations agencies to take a comprehensive approach to problems affecting children in order to address their direct and underlying causes.

The country programme is the vehicle through which UNICEF supports countries in their efforts to transform Convention ideals into legal safeguards and practical programmes benefitting children.

The Convention strengthens ongoing efforts to address the special needs of children in especially difficult circumstances. UNICEF will continue to work with governments, United Nations agencies, NGOs and agencies of the bilateral system to tackle the root causes of problems facing these children in an effort to reduce the incidence of abuse and exploitation and to protect and rehabilitate street children, refugee children, victims of war and natural disasters, orphans, disabled children and those trapped in the bondage of the drug trade, prostitution or other forms of exploitative labour. In its cooperation and alliance with other organisations, UNICEF will continue to make comparative advantage a determining factor in its interventions, since other groups or agencies are often in a better position to intervene directly and effectively.

The Convention sets standards protecting children's right to participate fully, in accordance with their evolving capacity, in all facets of community life (Articles 12, 13, 30 and 31). Children in especially difficult circumstances are least able to exercise these rights. They are marginalised by society and are very often remembered only when their actions are believed to threaten public order. These provisions of the Convention are particularly relevant to the most deprived and vulnerable children, and the actions of UNICEF

and all agencies working for their benefit should be guided by these principles.

MONITORING THE IMPLEMENTATION OF CHILDREN'S RIGHTS

While it is the responsibility of the Committee on the Rights-of-the-Child to monitor States' compliance with the Convention, a function in which UNICEF has no direct role, UNICEF monitors the situation of children throughout the various phases of the country programming exercise. Situation analyses, programme evaluations and various studies on specific issues affecting children are ongoing processes at national and community levels. Data generated through these activities enable governments to assess their progress towards achieving national goals and to develop systems for detecting special problems. This information also forms a large part of the basis of the global advocacy for children undertaken by UNICEF and others.

OVER THE NEXT DECADE, UNICEF will be monitoring progress towards attainment of the goals and targets for children in the 1990s, and in so doing, will be helping governments to strengthen their national capacities for assessing progress towards the realisation of the rights set forth in the Convention. These UNICEF activities will contribute to efforts at the national level to monitor progress towards implementing the Convention. UNICEF will encourage governments to give priority attention to monitoring their own compliance with the Convention at national and community levels, since the monitoring process is, above all, a mechanism for enabling governments to assess their progress towards achieving human development goals.

Some countries are already moving in this direction. For example, the States members of the South Asian Association for Regional Cooperation (SAARC) have committed themselves to reporting at their regional gatherings on progress in implementing the Convention, thereby establishing a system for addressing common regional concerns relating to children. Recently, the Association of South East Asian Nations (ASEAN) adopted a Plan of Action for children. By developing national and regional monitoring systems, governments will also create a favourable climate for cooperative approaches to implementing the Convention.

Monitoring at national and regional levels will also enable governments and regional intergovernmental bodies to develop common strategies for the attainment of standards set by the Convention and to define comprehensive social policies for broader human development to be reflected in national development plans. The monitoring process will also enable governments to determine the levels of resources needed to achieve these goals.

Within the framework of the country programme and in collaboration with the Centre for Human Rights and other bodies of the United Nations system, UNICEF will continue to cooperate with governments and other partners at national and regional levels as they implement the Convention. UNICEF support will cover activities in the following areas:

- a) Aid in the development of national mechanisms to gather gender-specific and area-specific data on children which can be used as a basis for policy development for States' reports on compliance with the Convention;
- b) Support enabling governments to review legislation pertaining to children in order to ensure compliance with the norms of the Convention and with international humanitarian laws for child protection;
- c) Support for relevant studies on issues related to the Convention;
- d) Support information and education campaigns to promote knowledge and awareness of children's rights among children, youth and influential groups;
- e) Implement training to ensure that government and UNICEF staff, United Nations agencies and NGOs whose activities have an impact on children are familiar with the provisions of the Convention and act to ensure that their programmes have a positive influence on progress towards the full implementation of the Convention.

UNICEF COOPERATION AT THE INTERNATIONAL LEVEL

While Article 5 of the Convention recognises that families have the primary responsibility for the care and protection of children, Article 2 obligates States to provide special assistance to children whose

families either do not or can no longer act in their best interest. But the Convention goes further, breaking new ground for international human rights treaties. It introduces the idea that protecting children's rights, either from deliberate acts of aggression or political blunders, or from short-sighted policies and negligence

can no longer be seen as a concern solely for those most directly responsible for children's well-being or of the children who are the victims.

THE THEME OF INTERNATIONAL cooperation runs throughout the text of the Convention, obligating the organisations of the UN and other competent bodies to work with States and the Committee on the Rights of the Child in ensuring that the countries needing help can have recourse to various forms of assistance. In this sense, international agencies are also parties to this Convention, and its implementation must be seen to have an important international dimension.

Advocacy for the well-being of children has become a major UNICEF function and the experience gained in this area during the past decade is of particular relevance to the implementation of the Convention. Advocacy has been an integral part of UNICEF support for specific projects at the country level for many years, but it has now become a broader process at international and regional levels through which UNICEF tries to engender political support and additional resources for children.

Through the International Child Development Centre at Florence, UNICEF is encouraging research and policy studies on the implementation of the Convention in various social, cultural and economic settings, with special attention to developing effective strategies for introducing the legal concept of children's rights into the programming process.

SUMMARY OF UNICEF ACTIVITIES IN SUPPORT OF THE IMPLEMENTATION OF THE CONVENTION

UNICEF's efforts towards implementing the Convention can be summed up as follows:

- A) In cooperation with developing countries:
 - i) To create and further develop national mechanisms to gather gender-specific and area-specific data on children that can be used as a basis for policy development and for States' reports on compliance with the Convention. In this regard, UNICEF is preparing revised guidelines for the country situation analyses to ensure that the standards set by the Convention and the range of issues it raises are systematically incorporated into the scope of these analyses;
 - ii) To support enabling governments to review legislation pertaining to children in order to ensure compliance with the norms of the Convention and with international humanitarian laws for child protection. In this undertaking, UNICEF will be guided by the branch of the Centre for Human Rights, which is responsible for advisory services and technical assistance in the field of

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human rights;

- iii) To support relevant studies on Convention-related issues;
 - iv) To provide training to ensure that governments and UNICEF staff, United Nations agencies and NGOs, whose activities have an impact on children, are familiar with the provisions of the Convention and act to ensure that their programmes have a positive influence on progress towards the full implementation of the Convention;
 - v) To devise information and education campaigns to promote knowledge and awareness of children's rights among children, youth and influential groups;
- B) Activities in industrialised countries:
- i) To devise information and education campaigns to promote knowledge and awareness of children's rights among children, youth and influential groups;
 - ii) To promote activities with schools and youth organisations to enable children to participate in debates on the implementation of the Convention and to express their views on their own situation;
 - iii) To strengthen the capacity of the National Committees for UNICEF to undertake advocacy and other activities to support the implementation of the Convention;
 - iv) To provide information exchange on policies and programmes in developing countries — also applicable in specific situations in industrialised countries;
 - v) To support studies and research on various technical aspects of applying the Convention in specific circumstances where children are at greatest risk and where the problem is common to both developing and industrialised countries, for example, studies on the situation of children of migrants and the complementarity between implementing children's rights and women's rights.

ROLE OF THE REGIONAL OFFICE

Important for us at the regional level, is the recognition that the Asian and Pacific countries have themselves been active in promoting child rights issues. Twenty-five countries in the region have formally ratified the Convention. Others are on the threshold of doing so. In accordance with the terms of the Convention, some countries are already in the process of preparing and submitting their first report to the Committee on the Rights of the Child, whilst a small number of others have already done so. The Committee has acknowledged the good faith effort being made by these countries and has commended certain of them — Vietnam springs to mind — on their frank and transparent reporting.

In the last two years alone, national and regional bodies have been set up in several Asian and Pacific countries to

deal specifically with child rights issues. This development is not only exciting but is a challenging new avenue to all those associated with it. A worthy example is that of Child Rights ASIANET, which, since its inception, has been so energetic in its catalytic consultative roles and is, of course, the main reason why we

are all here today. We have also seen conferences and meetings such as two Regional Consultations specifically on child rights take place in the region. These have all made a positive contribution to the understanding and development of the child rights agenda, and, more concretely, have resulted in the establishment of ASIANET itself and the endorsement of the Beijing Consensus. Many governments had adopted the Consensus with the broad aim of translating the Convention into concrete programmes and services for children.

THE NATIONAL PROGRAMMES of Action, which most of the Heads of State and Governments have brought into being as a result of the World Summit for Children, are, in fact, the Convention in action. At a recent Ministerial Consultation in Manila, delegates from East Asia and the Pacific who gathered to follow-up on the progress of the National Programmes of action, supported the universal ratification of the Convention on the Rights of the Child by 1995 as one of the important mid-decade goals.

The governments of the ASEAN countries recently agreed on a frame of reference to strengthen regional cooperation in the survival, development and protection of children. As a result, desk officers have been placed in Member States to oversee implementation of the ASEAN Plan of Action for Children that will be based on this frame of reference. Our Regional Office has had the privilege of working with some countries toward implementing the Convention, such as ensuring inclusion of child rights in the new Constitution of Cambodia; drafting of a child rights protection law in Mongolia; and establishing a Children's Rights Centre in the Philippine Commission on Human Rights.

With that small wealth of experience already behind us, it is time to chart our future path. One real step that we can take together would be to encourage ratification of the Convention to encompass all countries of the region. This could be achieved by ensuring that information is properly

The National Programmes of Action, which most of the Heads of State and Governments have brought into being as a result of the World Summit for Children, are, in fact, the Convention in action.

disseminated and by providing positive examples to policy makers seeking to put legislation and policies in place. Further progress could be made by setting short-, medium-, and long-term regional goals. In the short-term, we could set regional priorities and begin by implementing those which are easily achieved. This would not only be another move forward but would undoubtedly gain support for further action.

On a longer-term basis, and within the framework of the Mid-Decade Goals, we could identify the priority of the elements embodied in the Convention to be pursued in regional countries over the next two years. Key personnel involved in Child Rights could be trained to better understand the process. Agencies active in the monitoring role could be made more effective in reporting on the implementation of the Convention. I am sure that many of you have more ideas on how we can best proceed on a complementary course of action. UNICEF and ASIANET believe that by promoting a combined effort we can take the practical steps required to promote, monitor and thereby improve the well-being of our children at the national and regional level.

CONCLUSION

The role of international agencies, and particularly that of UNICEF, in the CRC process is varied and extensive. The wide range of activities stretch from advocacy to programming and monitoring. It is fast becoming recognised that advocacy and programming have become united components of one process. The primary objectives of both UNICEF and governments must be to enhance the quality of life of children and women and prepare the groundwork for a sustained, long-term strategy to achieve the goals of the National Programmes of Action, in conformity with the fundamental intentions of the Convention.

By cooperating with countries in setting-up National Programmes of Action, it has been demonstrated how important a support role UNICEF can play in assisting governments to strengthen their national capacity towards accomplishing child rights. UNICEF encourages governments in their endeavours by stimulating the mobilisation of significant additional resources to support the NPA goals. The principal vehicle for UNICEF support in implementing the Convention in developing countries is the Country Programme. The Country Programme allows UNICEF to

monitor the situation of children throughout the various phases of the exercise. Steps being taken by UNICEF to facilitate and support implementation of the Convention are rapidly becoming an essential part of ongoing UNICEF programmes.

ONE MORE FUNDAMENTAL step that must be taken is to ensure that the general principles of the Convention are translated into national laws and policies. The Convention itself allows UNICEF flexible and innovative approaches to implementing and monitoring child rights, thereby giving UNICEF the opportunity to tackle some of the more "difficult" Articles of the Convention, such as those concerning "non-discrimination" and "the best interests of the child." Over the next decade, UNICEF will monitor progress towards the attainment of goals and targets for children in the 1990s and, in so doing, enable Governments to intensify their ability to advance towards the realisation of the rights set forth in the Convention.

It is the duty of the international organisations to ensure that the principles of the Convention on the Rights of the Child are built into national development plans. International organisations can play an extremely important role by working with governments to identify why poverty has such a harsh impact upon some families and to highlight means by which that poverty can be alleviated. In the true spirit of First Call for Children, UNICEF must encourage governments to make the necessary economic adjustments required to alleviate poverty and thereby improve health, nutrition, education and the general welfare of their nation's children.

UNICEF and other international organisations must lead in encouraging worldwide cooperation and development on child rights. By encouraging joint action, the international community will automatically play an imperative catalytic role. The Convention on the Rights of the Child provides international organisations, and particularly UNICEF, with the opportunity to demonstrate how the principles of human rights can become an integral part of the daily work of development agencies. The high profile of UNICEF as "the Children's Agency" must be used to forcefully and energetically advocate for children. We, each of us, have a responsibility to guarantee that the Convention really works for children. ■

THE A TO Z GUIDE

What UNICEF-East Asia Pacific Region Can Do For CRC

(The Formula for Regional Advocacy in East Asia and the Pacific)

ADVOCATE	for children: use its high profile position as <i>the Children's Agency</i>
BUILD	alliances in the name of children
CHART	a path forward based on experience and vision
DIALOGUE	for action — action leads to progress
ENCOURAGE	the adoption and application of solid monitoring and reporting systems
FACILITATE	the training of key personnel involved in child rights
GENERATE	public awareness about child rights and First Call for Children
HIGHLIGHT	practical steps which can be taken for child rights
IDENTIFY	problem areas and search for solutions
JOIN	together to disseminate information on the Convention and child rights
KEEP UP	the momentum so that the promises made to children are kept
LEAD	in promoting universal ratification of the CRC
MOBILISE	for a combined and cohesive effort in the first call for children
NETWORK	to strengthen regional and global cooperation on CRC
ORGANISE	conferences and workshops to assist in understanding and development of CRC
PROMOTE	achievable goals and gain support for further action

Use **QUISUMBING!** — ensure that the principles of CRC become national laws and policies

REMIND	governments and policy makers of their commitment to children
SUPPORT	GOs, NGOs and IOs in improving input and impact on children's programmes
TRANSLATE	the Convention into Action — into programmes/services for children (NPAs)
URGE	policy makers to put in place legislation and policies in harmony with CRC
VOICE	the concerns and aspirations of children when their voices aren't heard
WHY	don't all of us do something today that takes child rights one step further?
ZEALOUSLY	sustain the dynamic spirit and positive climate which permeates CRC today

Valedictory Address

Richard H. Young

UNICEF

Honourable Minister of State for Law, Justice and Company Affairs, Mr Bhardwaj; Honourable Justice Pandian; Honourable Justice Kirpal; Mr R. K. Anand, Vice President, Indian Law Institute; distinguished colleagues; friends,

Let me first say that it has been a pleasure to work with the Indian Law Institute, Mr R. K. Anand, his colleagues and the other organisers of this International Conference. I believe that the Conference has been a landmark for child rights internationally and in India in particular. You have taken a quantum leap in this Conference in raising consciousness and generating commitment at the highest levels of law and politics. I have been genuinely enlightened, moved and further motivated by the statements and presentations made. The Conference has been unique in bringing together professionals in child development, health, nutrition and education with legal luminaries and activists from India and abroad — a truly interdisciplinary experience.

In the few minutes available to me, let me very briefly reflect on some of the key statements emanating from the Conference. During the inaugural session, the Prime Minister of India asked, "Can we do today what the Founding Fathers of the Indian Constitution could not do?" Mr Narasimha Rao was referring to the banning of child labour and the implementation of compulsory primary education for all children. "The law has to be forceful and powerful," he said.

I believe that the consensus and recommendations of this Conference indeed reinforce this wish. However, as the Prime Minister emphasised, the recommendations must be implementable and, I feel, we have duly taken this into consideration by, for example, proposing a step-wise approach to enforcing compulsory primary education. Undoubtedly, participants feel that primary education is the key priority for children.

The President of India gave us a *tour de force* of

children's rights emphasising the problems of the girl child, child labour, street children and, again, the importance of primary education. He highlighted the need to reallocate resources away from military technology to the well-being and development of children. The Conference has clearly signalled that social policy and resource allocation must match legal strictures. The law is important but the law is not enough. The law is crucial though and I recall Justice Krishna Iyer's statement that "the history of the child will be rewritten given judicial activism in affirmative action." Give voteless and voiceless children a voice and a vote was his sentiment.

Swami Agnivesh, Shantha Sinha and others gave us a practical reminder of what is possible in removing children from bondage and labour and placing them in schools, their basic right. They highlighted the attitudinal barriers both at policy and parental levels which must be overcome to guarantee the child's right to basic education. Permeating their presentations was the optimism that this *can* be done given political will and the implementation of viable strategies.

My colleagues, Drs Richard Jolly and Jon Rohde, emphasised the 'doability' of measures to prevent child mortality and improve the physical and mental development of children. The techniques are simple, inexpensive and implementable. There is no excuse for inaction.

As Professor Ramalingaswamy said, "intersectoral action is a precondition for success in assuring children's rights." Again, I believe that this Conference has responded to this reality. However, as Professor Ramalingaswamy pointed out, "equity must be pursued proactively; it will not necessarily trickle down from economic growth." We therefore need to maintain a constant vigil and monitor *social* indicators of development regularly.

Let me end by returning to the children themselves by quoting the last line from a play performed by street

children that some of us had the pleasure of seeing one evening this week. They conclude, after depicting quite vividly the terrors of street life, by asking the audience, "What will you do now — go back to your houses and watch TV while we go to the station and sleep on the platform?"

I do hope that this Conference will not be regarded as just

another platform of eloquent speeches, fine words and rhetoric but a true awakening and basis for *concerted action*, starting today as the Honourable Minister urged, to ensure the rights of the child, that is, to ensure that children experience true childhood.

Thank you. ■

Recommendations To Protect Children's Rights

- 1 Create immediately an **Alliance for the Child**, in the form of an active body of persons in the field of law, in order to pursue all proposals vigorously. The body will function in partnership with the legal fraternity, voluntary groups working with children and all other interested persons including children.
- 2 Review all national legislation pertaining to the child in order to identify problems in the implementation of existing laws and to suggest fresh legislation where national legislation falls short of the standards set by the Convention on the Rights of the Child. This review should be completed three months prior to the due dates for the respective country reports, in order to enrich these reports.
- 3 Introduce the CRC into the syllabi of graduate law courses (LLB) as a compulsory paper and in all universities by the academic year 1995-96.
- 4 Facilitate a multi-media campaign, including the electronic media, to publicise the CRC and to advocate for the rights of children in simple terms to the public at large as well as to children.
- 5 Implement immediately the promise of free and compulsory primary education. This means enforcement of, and provision for, satisfactory educational facilities. This can be done incrementally starting with children of five years of age from the year 1994.
- 6 Make active efforts to remove children from bondage and all hazardous workplaces and to revise legislation, in order to prohibit child labour totally; these measures should be supported by community awareness campaigns on the value of primary education.
- 7 Strive for adult literacy so that parents can better understand, and cater to, their children's rights to education, health, nutrition and freedom from labour.
- 8 Pursue those in authority to provide incentives to those needy families which refrain from posting their children as wage earners.
- 9 Create greater awareness among law enforcement officers and the public about the plight of street children and children living in urban slums.
- 10 Transfer effectively the control over health and nutritional outreach services, education, water and sanitation, and disability aid to institutions ensuring delivery and accountability.
- 11 Address through legal and social action the specific needs of the girl child, to protect her right to survival, development, protection and participation. Specifically, to:
 - introduce more stringent laws banning sex selective foeticide;
 - ensure that there is compulsory registration of all births and deaths;
 - provide equal opportunities for boys and girls to participate in all social sector schemes dealing with health, nutrition and education;
 - enforce minimum age of marriage for girls and more stringent enforcement of anti-dowry legislation;
 - recognise the woman as a legal entity independent of her father or husband, removing the requirement for production of such information for various legal and governmental transactions. .
- 12 Sensitise judicial institutions, law enforcement agencies and the development administration to the concerns of the CRC in general and, in particular, to the provisions of the Juvenile Justice Act.
- 13 Improve children's access to law by developing mechanisms which make recourse to legal remedy affordable and effective.
- 14 Lobby and build alliances with decision makers, including political parties, Members of Parliament and State Legislatures, intellectuals, industrial associations and voluntary agencies to serve the interests of the child.

